
Wednesday
October 6, 1993

Federal Register

Briefings on How To Use the Federal Register
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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

(two briefings)

- WHEN:** October 19 at 9:00 am and 1:30 pm
- WHERE:** Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
- RESERVATIONS:** 202-523-4538



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on 202-275-1538 or 275-0920.

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Presidential Determination No. 93-39 of September 17, 1993**The President****Assistance to Jordan****Memorandum for the Secretary of State**

I. Pursuant to the authority vested in me by section 614(a) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2364(a)) (the "Act"), I hereby:

(1) determine that it is important to the security interests of the United States to furnish to Jordan, through funds appropriated during fiscal year 1993, up to \$20 million of assistance under Chapter 1 of Part I and Chapters 4 and 8 of Part II of the Act, and up to \$1 million of assistance under Chapter 5 of Part II of the Act, without regard to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102-391) or any other provision of law within the scope of section 614 of the Act;

(2) determine that it is vital to the national security interests of the United States to furnish to Jordan up to \$9 million in assistance under Section 23 of the Arms Export Control Act from Foreign Military Financing funds previously allocated to Jordan without regard to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102-391) or any other provision of law within the scope of section 614 of the Act; and

(3) authorize the furnishing of such assistance.

II. In addition, by virtue of the authority vested in me by section 573 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1993 (Public Law 102-391), I hereby determine and certify that the provision to Jordan of the assistance described in paragraph I above is in the national interest of the United States.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 17, 1993.

Presidential Documents

Presidential Determination No. 93-40 of September 28, 1993

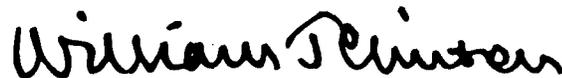
Transfer of \$424,000 in FY 1993 Foreign Military Financing Funds to the Economic Support Fund Account for Assistance to the Government of Mexico

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 610(a) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2261) (the "Act"), I hereby determine that it is necessary for the purposes of the Act that \$424,000 of funds made available for section 23 of the Arms Export Control Act for the cost of direct loans be transferred to, and consolidated with, funds made available for Chapter 4 of Part II of the Act.

I hereby authorize the use of fiscal year 1993 of the aforesaid \$424,000 in the funds made available above under Chapter 4 of Part II of the Act for assistance to the Government of Mexico to mitigate the economic hardship associated with the government's prior efforts to repatriate Chinese nationals.

You are authorized and directed to report this determination immediately to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 28, 1993.

Presidential Documents

Presidential Determination No. 93-41 of September 29, 1993

Determination To Authorize the Transfer of Economic Support Fund to the Peacekeeping Operations Fund To Support Regional Peacekeeping for Liberia

Memorandum for the Secretary of State

Pursuant to the authority vested in me by sections 552(c)(1) and 610(a) of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby determine that:

(i) as a result of an unforeseen emergency, the provision of assistance under chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and

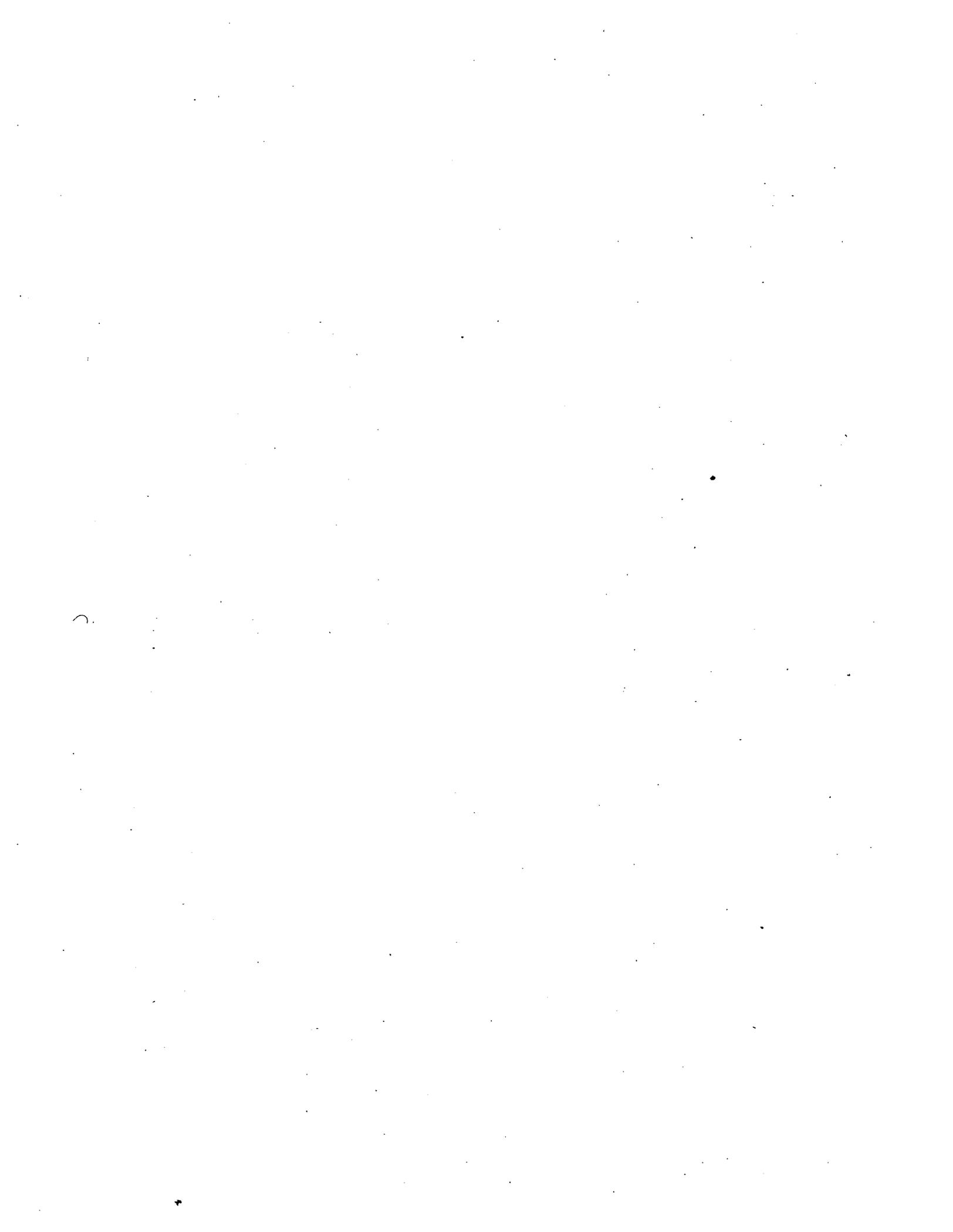
(ii) that it is necessary for the purposes of the Act that \$6.83 million of funds made available for the purposes of Section 23 of the Arms Export Control Act be transferred to, and consolidated with, funds made available for Part II, chapter 5, of the Act; and then transferred to, and consolidated with, funds made available for Part II, chapter 6 of the Act.

You are hereby authorized and directed to report this determination immediately to Congress.

This determination shall be published in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 29, 1993.



Rules and Regulations

Federal Register

Vol. 58, No. 192

Wednesday, October 6, 1993

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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93-075-1]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the list of suppressive areas under the witchweed quarantine and regulations by adding and deleting areas in North Carolina and South Carolina. These changes affect 7 counties in North Carolina and 2 counties in South Carolina. These actions are necessary in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

DATES: Interim rule effective October 6, 1993. Consideration will be given only to comments received on or before December 6, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-075-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Terry McGovern, Operations Officer,

Plant Protection and Quarantine, APHIS, USDA, room 646, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

Witchweed (*Striga spp.*), a parasitic plant that feeds off the roots of its host, causes degeneration of corn, sorghum, and other grassy crops. It is found in the United States only in parts of North Carolina and South Carolina.

The witchweed quarantine and regulations (contained in 7 CFR 301.80 through 301.80-10, and referred to below as the regulations) quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain witchweed hosts in the quarantined States for the purpose of preventing the artificial spread of witchweed.

Regulated areas for witchweed are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both types of areas in order to prevent the artificial movement of witchweed into noninfested areas. However, the eradication of witchweed is undertaken as an objective only in areas designated as suppressive areas. Currently, there are no areas designated as generally infested areas.

Designation of Areas as Suppressive Areas

We are amending § 301.80-2a of the regulations, which lists generally suppressive and infested areas, by adding areas in Craven, Cumberland, Greene, Pender, and Pitt Counties in North Carolina, and areas in Horry County in South Carolina to the list of suppressive areas.

The rule portion of this document lists the suppressive areas added for each county in North Carolina. Nonfarm areas, if any, are listed first; farms are then listed alphabetically. Additions and deletions to the list of suppressive areas in South Carolina are extensive, so the South Carolina portion of § 301.80-2a is revised in its entirety.

We are taking this action because surveys conducted by the United States Department of Agriculture (USDA) and State agencies of North Carolina and South Carolina have established that these areas meet one or more of the

following conditions specified in § 301.80-2(a) of the regulations:

1. Witchweed has been found in these areas.
2. There is reason to believe that witchweed is present in these areas.
3. It is deemed necessary to regulate these areas because of their proximity to infestation.
4. These areas cannot be separated for quarantine enforcement purposes from infested localities.

Designation of these areas as regulated areas imposes controls on the movement of regulated articles from these areas and prevents the spread of witchweed to noninfested areas.

Removal of Areas From List of Regulated Areas

We are also amending § 301.80-2a by removing areas in Craven, Cumberland, Greene, Pender, Sampson, and Wayne Counties in North Carolina and Dillon and Horry Counties in South Carolina from the list of suppressive areas.

We are taking this action because we have determined that witchweed no longer occurs in these areas; therefore, there is no longer a basis for listing these areas as suppressive areas for the purpose of preventing the artificial spread of witchweed. This action removes unnecessary restrictions on the interstate movement of regulated articles from these areas.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that a situation exists which warrants the publication of this rule without prior opportunity for public comment. Because of the possibility that witchweed could spread artificially to noninfested areas of the United States, it is necessary to act immediately to control its spread by adding specified areas to the list of suppressive areas in North Carolina and South Carolina. Also, where witchweed no longer occurs, immediate action is needed to delete unnecessary restrictions on the interstate movement of regulated articles.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the Federal Register. We will consider comments that are received within 60

days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This interim rule affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the U.S. Department of Agriculture, we have determined that approximately 280,907 small entities move these regulated articles interstate from North Carolina and South Carolina. This rule affects only 95 of these entities, however, by removing 75 entities from regulation and by placing 20 new entities under regulation.

We have determined that the 75 deregulated entities will each realize an annual savings of \$60 to \$70 in regulatory and control costs, for a combined savings of \$4500 to \$5250.

We estimate that the rule will cost each of the 20 newly-regulated entities about \$60 annually. They will each need to invest about \$20 per year in order to comply with the witchweed quarantine. Additionally, they will each lose access to interstate markets as a result of the rule, subsequently losing about \$40 in annual income.

In the instances where this interim rule removes specified areas from the list of suppressive areas, this rule will enable freer movement of goods and services across State lines. Consumers will benefit from lower prices and better access to products from the 75 entities removed from the list of suppressive

areas. Overall, we expect that this rule will enhance the ability of small entities to market products interstate.

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

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.80-2a, the list of suppressive areas in North Carolina is amended by adding, in alphabetical order, the following areas in Craven, Cumberland, Greene, Pender, and Pitt Counties:

§ 301.80-2a Regulated areas; generally infested and suppressive areas.

* * * * *

North Carolina

- (1) * * *
- (2) * * *

* * * * *

Craven County. The Chapman, Idel M., farm located .3 mile off west side of State

Secondary Road 1459 and 0.1 mile north of its junction with State Secondary Road 1463.

* * * * *
Cumberland County.

* * * * *
The Barefoot, Bobby, farm located on the south side of State Secondary Road 1708 and its western junction with State Secondary road 1609.

* * * * *
Greene County.

* * * * *
The Lane, Sylvester, farm located 3.8 miles east of Snow Hill, on both sides of State Secondary Road 1400 and 2.8 miles southeast of its junction with U.S. Highway 13.

* * * * *
The Williams, Minnie farm located on the north side of State Secondary Road 1417 and 0.8 mile east of its junction with State Secondary Road 1413.

The Wilson, Studie, farm located on the east side of State Secondary Road 1004 at its junction with State Secondary Road 1405 and 0.6 mile south of its junction with North Carolina Highway 903.

* * * * *
Pender County.

* * * * *
The Marshall, Milvin, farm located on the north side of State Secondary Road 1103 and 0.6 mile east of the southern junction of this road and State Secondary Road 1104.

* * * * *
The Squires, Nelson, farm located 0.4 mile south of the junction of State Secondary Road 1211 and State Secondary Road 1212 on the west side of 1211.

* * * * *
Pitt County.

* * * * *
The Cannon, James, farm located 5.4 miles northeast of Grifton on the west side of State Secondary Road 1918 and 0.1 mile north of its junction with State Secondary Road 1917.

- 3. In § 301.80-2a, the list of suppressive areas in North Carolina is amended by removing the following areas in Craven, Cumberland, Greene, Pender, Sampson, and Wayne Counties:
 - a. In Craven County, The Nelson, Joseph, Estate and The Tripp, Dudley, farm.
 - b. In Cumberland County, The McKeithan, Sarah E., farm and The McLaurin, Burnice, farm.
 - c. In Greene County, The Dunn, Joe, Estate farm.
 - d. In Pender County, The Fensel, F.P., farm; The Keith, James R., farm; The Lanier, Admah, farm; and The Larkins, Maggie, estate.
 - e. In Sampson County, The Jackson, Tony, farm and The Weeks, Glenn, farm.
 - f. In Wayne County, The Jones, Mary, farm.

4. In § 301.80-2a, the list of suppressive areas in South Carolina is revised to read as follows:

§ 301.80-2a Regulated areas; generally infested and suppressive areas.

* * * * *

South Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Berkeley County. The Magnigault, Clarence, farm located on the northwest corner of the junction of State Secondary Road 907 with U.S. Highway 52, this junction being 1.8 miles north of the junction of U.S. Highway 52 and U.S. Highway 17A, this junction being 1 mile northwest of the junction of U.S. Highways 52 and 17a with the Tail Race Canal.

Dillon County. That area bounded by a line beginning at a point where State Secondary Highway 22 intersects the South Carolina-North Carolina State line and extending south along said highway 22 to its junction with State Secondary Highway 45, then southwest along highway 45 to its junction with the Little Pee Dee River, then northerly along that river to its junction with Interstate 95, then southeast along Interstate 95 to its junction with Pocosin Swamp, then northwest along Pocosin Swamp to its junction with the Dillon-Marlboro County line, then northeast along the county line to its junction with the South Carolina-North Carolina State line, then southeast along the State line to the point of beginning.

The Church, Emerson, farm located on the south side of State Secondary Highway 155 and two miles west of the junction of highway 155 with State Primary Highway 41, this junction being 0.6 mile south of the junction of highway 41 and State Secondary Highway 74.

The Elvington, Clifton, Estate located on both sides of a dirt road and 0.5 mile west of the junction of the dirt road and State Primary Highway 41, this junction being 0.4 mile south of the junction of highway 41 and State Secondary Highway 34.

The Elvington, James C., farm located on both sides of a dirt road and 0.2 mile west of the junction of the dirt road and State Primary Highway 41, this junction being 0.4 mile south of the junction of highway 41 and State Secondary Highway 34.

The Elvington, William, farm located on both sides of a dirt road and 0.2 mile northeast of the junction of the dirt road and State Secondary Highway 74, this junction being 1.7 miles south of the junction of highway 74 and State Primary Highway 41.

The Fore, Ernest, farm located on the southeast side of State Primary Highway 41 and 0.2 mile south of the junction of highway 41 and State Secondary Highway 34, this junction being 0.6 mile south of the junction of highway 41 and State Secondary Highway 74.

The Fore, John, farm located on the east side of State Primary Highway 524 and 1.7 miles south of the junction of highway 524 and U.S. Highway 301, this junction being 0.3 mile north of the junction of highway 301 and State Primary Highway 690.

The Smith, A.C., farm located on the south side of State Secondary Highway 155 and 2.3 miles west of the junction of highway 155 and State Primary Highway 41, this junction being 0.6 mile south of the junction of

highway 41 and State Secondary Highway 74.

Horry County. That area bounded by a line beginning at a point where U.S. Highway 76 intersects the South Carolina-North Carolina State line, then south along highway 76 to its junction with State Secondary Highway 44, then south along highway 44 to its junction with State Secondary Highway 19, then south along highway 19 to its junction with Honey Camp Branch, then southwest along Honey Camp Branch to its junction with Lake Swamp, then east along Lake Swamp to its junction with Prince Mill Swamp, then south along Prince Mill Swamp to its junction with State Secondary Highway 309, then southwest along highway 309 to its junction with State Secondary Highway 45, then southwest along highway 45 to its junction with State Secondary Highway 129, then northwest along highway 129 to its junction with U.S. Highway 501, then northwest along highway 501 to its junction with the Little Pee Dee River, then northeast along the Little Pee Dee River to its junction with the Lumber River, then northeast along Lumber River to its junction with the South Carolina-North Carolina State line, then southeast along the State line to the point of beginning.

That area bounded by a line beginning at the junction of U.S. Highway 19, State Primary Highway 91, and State Primary Highway 90, then east along highway 90 to its junction with State Secondary Highway 1029, then south along highway 1029 to its junction with a dirt road known as the Telephone Road, then extending northwest along a line to the beginning of the south branch of Jones Big Swamp, then northerly along Jones Big Swamp to its junction with State Primary Highway 90, then east along highway 90 to the south branch of Mills Swamp, then north along Mills Swamp to its junction with the Waccamaw River, then east along Waccamaw River to its junction with State Primary Highway 9, then southeast along highway 9 to the point of beginning.

The Alisbrook, J.R., farm located on the south side of a dirt road and 0.2 mile east of the junction of the dirt road with State Secondary Highway 19, this junction being 1.1 miles south of the junction of highway 19 and State Secondary Highway 139.

The Chestnut, J.B., farm located on the east side of a dirt road and 0.8 mile east of its junction with a second dirt road, this junction being 0.5 mile south of the junction of the second dirt road with State Primary Highway 90, this junction being 0.8 mile south of the junction of highway 90 with State Secondary Highway 31.

The Cooper, Thomas B., farm located northeast of a dirt road and 0.75 mile northwest of the junction of this dirt road with rural paved road No. 109, this junction being 2.25 miles northeast of the junction of road 109 with rural paved road No. 79.

The Cox, Nancy T., farm located on the northwest corner of the junction of two dirt roads, this junction being 0.8 mile northeast of the junction of State Secondary Road 105 and State Secondary Road 377. One of the dirt roads is an extension of State Secondary Road 105.

The Cox, Velma, farm located on the east side of a dirt road and 0.5 mile south of its

junction with State Secondary Highway 911, this junction being 0.8 mile southwest of the junction of highway 911 with State Secondary Highway 568.

The Edge, Nina L., farm located on the south side of a dirt road 0.7 mile east of its junction with a second dirt road, this junction being 0.5 mile south of the junction of the second dirt road with State Primary Highway 90, this junction being 0.8 mile south of the junction of highway 90 with State Secondary Highway 31.

The Graham, Mammie, farm located on the east side of a dirt road and 0.2 mile south of the junction of the dirt road with State Secondary Highway 309, this junction being 1.5 miles west of the junction of highway 309 and State Secondary Highway 19.

The Harden, John, farm located on the northwest side of a dirt road and 0.4 mile northeast of the junction of this dirt road with the junction of State Secondary Roads 105 and 377.

The Holmes, Marie T., farm located on the west side of a dirt road and 0.7 mile northwest of the junction of this dirt road with State Primary Highway 90, this junction being 3.2 miles south of the junction of highway 90 and State Secondary Road 31.

The Inman, Rosetta, farm located 0.1 mile north of the junction of State Primary Highways 111 and 1233, this junction being 1.2 miles southeast of the junction of highway 111 and State Primary Highway 57.

The Livingston, W.S., farm located on the south side of a dirt road and 0.6 mile east of its junction with a second dirt road, this junction being 0.5 mile south of the junction of the second dirt road and State Primary Highway 90, this junction being 0.8 mile south of the junction of highway 90 and State Secondary Highway 31.

The Martin, Daniele E., farm located on the east side of State Primary Highway 90 and 0.9 mile northeast of the junction of highway 90 with State Secondary Highway 377.

The Royals, Lathan, farm located on the west side of State Secondary Highway 139 and 0.8 mile northwest of the junction of highway 139 and State Secondary Highway 66, this junction being 0.2 mile northeast of the junction of highway 66 with State Secondary Highway 873.

The Stevens, Cora G., farm located on the north side of a dirt road and 0.3 mile northeast of its junction with State Secondary Highway 112, this junction being 1.2 miles east of the junction of highway 112 with State Secondary Highway 139.

The Stevens, James, farm located on the south side of a dirt road and 0.3 mile northeast of its junction with State Secondary Highway 112, this junction being 1.2 miles east of the junction of highway 112 with State Secondary Highway 139.

The Thomas, James D., farm located on the west side of a dirt road and 1.0 mile northwest of the junction of the dirt road with State Primary Highway 90, this junction being 3.2 miles south of highway 90 with State Secondary Highway 31.

The Thomas, Fred, farm located on the west side of a dirt road and 0.1 mile northwest of the junction of the dirt road with State Primary Highway 90, this junction being 3.2 miles south of the junction of

highway 90 and State Secondary Highway 31.

The Thomas, Hubert, farm located on the west side of a dirt road and 0.3 mile northwest of the junction of the dirt road with State Primary Highway 90, this junction being 3.2 miles south of the junction of highway 90 and State Secondary Highway 31.

The Thomas, J.R., farm located on the west side of a dirt road and 0.2 mile northwest of the junction of the dirt road with State Primary Highway 90, that junction being 3.2 miles south of the junction of highway 90 and State Secondary Highway 31.

The Todd, Mack, farm located on the west side of State Secondary Highway 19 and 0.5 mile north of the junction of State Secondary Highways 19 and 97, this junction being 1.1 miles north of the junction of highway 19 and State Secondary Highway 65.

The Vaugh, Ruth, farm located on the east side of a dirt road and 0.7 mile northwest of this dirt road and its junction with State Primary Highway 90, this junction being 3.2 miles south of the junction of highway 90 and State Secondary Highway 31.

The Warren, Kevin, farm located on the west side of a dirt road and 0.2 mile north of its junction with State Primary Highway 90, this junction being 0.5 mile east of the junction of highway 90 with State Secondary Highway 377.

Marion County. The entire county.

Done in Washington, DC, this 29th day of September 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-24487 Filed 10-5-93; 8:45 am]

BILLING CODE 3410-34-P

7 CFR Part 301

[Docket No. 91-149-6]

Oriental Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Oriental fruit fly regulations by removing the quarantine on a portion of San Diego County, CA, and by removing restrictions on the interstate movement of regulated articles from that area. The regulations, including the quarantine of a portion of San Diego County, were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from San Diego County. The interim rule was necessary to remove an unnecessary regulatory burden on the public.

EFFECTIVE DATE: November 5, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective on June 29, 1993, and published in the *Federal Register* on July 8, 1993 (58 FR 36589-36590, Docket No. 91-149-5), we amended the Oriental fruit fly regulations in 7 CFR 301.93 by removing the quarantine on a portion of San Diego County, CA, and by removing restrictions on the interstate movement of regulated articles from that area. This portion of San Diego County, CA, had been quarantined due to the possibility that the Oriental fruit fly could be spread from this area to noninfested areas of the United States. Once that situation no longer existed, the Animal and Plant Health Inspection Service took action to remove this unnecessary regulatory burden on the public.

Comments on the interim rule were required to be received on or before September 7, 1993. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12291 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR 301.93-3 and that was published at 58 FR 36589-36590 on July 8, 1993.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 29 day of September 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-24488 Filed 10-5-93; 8:45 am]

BILLING CODE 3410-34-P

Agricultural Marketing Service

7 CFR Part 1002

[DA-93-22]

Milk in the New York-New Jersey Marketing Area; Amendments to Classification and Accounting Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document approves the tentative amendments to the classification and accounting rules and regulations issued by the Market Administrator of the New York-New Jersey marketing order after consideration of information received at a public meeting.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT:

Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-2357.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a final rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action implements the rules under which recent amendments to the New York-New Jersey order will be administered.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect, and it will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937 (the Act)

provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to provisions of § 1002.46 of the order, as amended, regulating the handling of milk in the New York-New Jersey marketing area (7 CFR part 1002), the Market Administrator of said order on July 22, 1993, issued tentative amendments to the classification and accounting rules and regulations.

The tentative amendments to the rules and regulations are based upon information received at a public meeting held on June 22, 1993, at Albany, New York. A notice of such meeting was mailed to all known interested persons on May 28, 1993. Following the meeting, interested persons were given until June 30, 1993, to file briefs. No briefs were filed.

A copy of the stenographic record of the public meeting concerning such amendments to the rules and regulations and the tentative amendments to the rules and regulations were each forwarded by the Market Administrator to the Secretary for approval. Upon consideration of such tentative amendments in the light of the stenographic record, said amendments to the classification and accounting rules and regulations are hereby approved.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists not to engage in further public procedures because such further procedures would be unnecessary and contrary to the public interest, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because:

(1) Pursuant to actual notice, a public meeting was held concerning these amendments, and interested persons were given an opportunity to comment

through the filing of briefs. No Briefs were received.

(2) A copy of the tentative amendments to the accounting rules and regulations was mailed on July 22, 1993, to all handlers operating pool plants and other interested parties, thus affording such persons a reasonable time to prepare for the effective date herein specified;

(3) Amendments to the marketing order, as amended, to which such amended rules and regulations apply were effective July 1, 1993; and

(4) The said amended rules and regulations are required by provisions of the order, as amended, to be effective on the first day of the month following their approval.

Accordingly, the said amendments to the classification and accounting rules and regulations shall be effective on and after October 1, 1993.

The tentative amendments issued by the Market Administrator and approved by the Secretary are set forth below.

List of Subjects in 7 CFR Part 1002

Milk marketing orders.

For the reasons set forth in the preamble, part 1002 of title 7 of the Code of Federal Regulations is amended to read as follows:

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. The authority citation for 7 CFR part 1002 continues to read as follows:

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

2. Section 1002.102 is revised to read as follows:

§ 1002.102 Milk and milk products.

Milk, Fluid milk products, Fluid cream products, and other milk products containing or produced from skim milk and/or butterfat are as defined pursuant to prevailing standards of identity. (21 CFR parts 131, 133, and 135)

3. Section 1002.140 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1002.140 Method.

(a) On the basis of the skim milk and butterfat in fluid milk products (skim milk equivalent and butterfat in concentrated fluid milk products) and products included in § 1002.41(c)(1) which are held at a plant, moved from a plant, dumped at a plant, destroyed or lost under extraordinary circumstances, or used at the plant to produce products other than fluid milk products or products included in § 1002.41(c)(1);

(b) On the basis of the fluid skim milk equivalent and butterfat content of milk products, other than fluid milk products and products included in § 1002.41(c)(1), which are reprocessed, converted, or combined with another product during the month or for which the handler fails to establish a disposition.

4. Section 1002.141 is amended by revising the section heading and paragraphs (a), (b), (d), (e), and (f) to read as follows:

§ 1002.141 Preliminary accounting for other than fluid milk products and products included in § 1002.41(c)(1) at pool plants.

(a) Separately tabulate the total pounds of each milk product, other than a fluid milk product or product included in § 1002.41(c)(1), contained in opening inventory and received at the plant.

(b) Separately tabulate the total pounds of each milk product, other than a fluid milk product or product included in § 1002.41(c)(1), contained in closing inventory at or moved from the plant.

* * * * *

(d) If the sum of the tabulation in paragraph (b) of this section exceeds the sum of the tabulation in paragraph (a) of this section, the excess shall be considered as milk products manufactured and shall be subject to further accounting as a product produced in the current month.

(e) When a milk product other than a fluid milk product or product included in § 1002.41(c)(1) manufactured during the month is reprocessed, converted, or combined with another product during the same month, the fluid milk products, products included in § 1002.41(c)(1), and other source milk used in the first instance shall be considered to have been used directly in the product resulting from such reprocessing, conversion, or combining.

(f) When skim milk powder or other concentrated milk products manufactured in a month are used in the same month to fortify a fluid milk product or a product included in § 1002.41(c)(1), the skim milk equivalent of that portion of such products which is in excess of the volume included in the fortified product shall be determined and accounted for in accordance with § 1002.246 (b) and (c).

5. Section 1002.143 is amended by revising paragraph (a)(5) to read as follows:

§ 1002.143 Skim milk and butterfat accounted for at a pool plant.

(a) * * *

(5) In the skim milk equivalent of skim milk powder and other concentrated milk products determined pursuant to § 1002.246 (b) and (c) to be in excess of the volume included in the fluid milk products and products included in § 1002.41(c)(1) accounted for in paragraph (a) (1) and (2) of this section. In the event that the skim milk in fluid milk products or products included in § 1002.41(c)(1) is classified in more than one class, the tabulation should be subdivided to show the quantity of skim milk in each class. The total of all skim milk so tabulated shall be known as the skim milk accounted for at the plant.

6. Section 1002.160 is revised to read as follows:

§ 1002.160 Procedure for allocation of skim milk and butterfat classified.

The allocation procedure is set forth in §§ 1002.40(c) and 1002.45.

7. Section 1002.180 is revised to read as follows:

§ 1002.180 Assignment at a plant which is not a pool plant, another order plant nor a producer-handler plant under any other order.

The allocation procedure is set forth in § 1002.44(d).

8. Section 1002.220 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1002.220 Method of accounting for closing inventories.

(b) As Class II in the form of packaged products included in § 1002.41(c)(1) and in bulk concentrated fluid milk products at a pool plant.

(c) As Class III in the form of bulk fluid milk products (other than bulk concentrated fluid milk products) and bulk products included in § 1002.41(c)(1) at a pool plant or such products in bulk or packaged form at a plant not defined in § 1002.8 (b) or (d).

9. Section 1002.230 is revised to read as follows:

§ 1002.230 Butterfat tests.

In the absence of information establishing the butterfat content of a milk product, prevailing standards of identity shall be used. When skim milk powder is used for reconstitution or fortification of fluid milk products or products included in § 1002.41(c)(1), it will be considered to contain no butterfat. (21 CFR parts 131, 133, and 135)

10. Section 1002.231 is revised to read as follows:

§ 1002.231 Milk solids not fat tests.

In the absence of information establishing the milk solids not fat content of a milk product, prevailing standards of identity shall be used. (21 CFR parts 131, 133, and 135)

11. Section 1002.232 is amended by revising paragraph (b) to read as follows:

§ 1002.232 Weights.

(b) Other products.

Product	Weight per gallon (pounds)
Dairy farmer milk	8.60
Cultured milk drinks	8.60
Flavored milk drinks	8.00
Evaporated milk	9.10
Sweetened condensed milk	10.80
Sweetened condensed skim milk ..	11.20
Liquid yogurt	8.00
Kefir	8.00
Milkshake drinks	8.00
Frozen dessert mix (except chocolate)	9.10
Frozen dessert mix (chocolate)	9.25
Frozen dessert mix (ice milk)	9.10
Frozen dessert mix (sherbet)	9.10
Whipped topping mixture	8.65

12. Section 1002.233 is revised to read as follows:

§ 1002.233 Weights and equivalents of concentrated skim milk and skim milk powder.

In the absence of information establishing the weight or skim milk equivalent of concentrated skim milk and skim milk powder, the following table shall be used:

Concentrated skim milk

A Percent total solids in the mixture	B	C	D
	Weight per gallon (pounds)	Product skim equiv. factor	Class III skim equiv. factor
24.5 but less than 25.5	9.22	2.851	1.915
25.5 but less than 26.5	9.26	2.965	2.033
26.5 but less than 27.5	9.30	3.079	2.151
27.5 but less than 28.5	9.34	3.193	2.269
28.5 but less than 29.5	9.38	3.307	2.387
29.5 but less than 30.5	9.42	3.421	2.505
30.5 but less than 31.5	9.47	3.535	2.623
31.5 but less than 32.5	9.51	3.649	2.741
32.5 but less than 33.5	9.55	3.763	2.859
33.5 but less than 34.5	9.59	3.877	2.977
34.5 but less than 35.5	9.63	3.991	3.095
35.5 but less than 36.5	9.68	4.105	3.213
36.5 but less than 37.5	9.72	4.219	3.331
37.5 but less than 38.5	9.76	4.333	3.449
38.5 but less than 39.5	9.81	4.447	3.567
39.5 but less than 40.5	9.85	4.561	3.685
40.5 but less than 41.5	9.90	4.675	3.803
41.5 but less than 42.5	9.94	4.789	3.921
42.5 but less than 43.5	9.99	4.903	4.039
43.5 but less than 44.5	10.04	5.017	4.157
44.5 but less than 45.5	10.08	5.131	4.275
45.5 but less than 46.5	10.13	5.245	4.393
46.5 but less than 47.5	10.18	5.359	4.511
47.5 but less than 48.5	10.23	5.473	4.629
48.5 but less than 49.5	10.28	5.587	4.747
49.5 but less than 50.5	10.32	5.701	4.865

Concentrated skim milk

A Percent total solids in the mixture	B	C	D
	Weight per gallon (pounds)	Product skim equiv. factor	Class III skim equiv. factor
50.5 but less than 51.5	10.37	5.815	4.983
51.5 but less than 52.5	10.42	5.929	5.101
52.5 but less than 53.5	10.47	6.043	5.219
53.5 but less than 54.5	10.53	6.157	5.337
54.5 but less than 55.5	10.58	6.271	5.455

For solids contents not listed, the following formula shall be used:
 Weight per Gallon=[100/(100-(%SNF * .38556))] * 8.3341
 Product skim equivalent factor=% SNF/ 8.77
 Class III skim equivalent factor=Product skim equivalent factor-(8.63/ weight per gallon)

Skim milk powder			
A	B	C	D
Percent total solids in the mixture	Weight per gallon (pounds)	Product skim equiv. factor	Class III skim equiv. factor
		11.000	10.360

13. A new section 1002.234 is added to read as follows:

§ 1002.234 Weights and equivalents of concentrated milk and milk powder.

In the absence of information establishing the weight or skim milk equivalent of concentrated milk and milk powder, the following formula shall be used:

Weight per Gallon=[100/(100+((%BF * .04811) - (%SNF * .38556)))] * 8.3341
 Product skim equivalent factor=% SNF/ 8.77
 Class III skim equivalent factor=Product skim equivalent factor-(8.63/ weight per gallon)

Milk powder			
A	B	C	D
Percent total solids in the mixture	Weight per gallon (pounds)	Product skim equiv. factor	Class III skim equiv. factor
		11.000	10.360

14. Section 1002.241 is amended by revising paragraph (a) to read as follows:

§ 1002.241 Skim milk and butterfat in standardized milk.

(a) The butterfat content of milk established to have been standardized shall be the same as the butterfat in the

milk, cream, and skim milk used to make such standardized milk less the butterfat in any fluid milk product or fluid cream product removed to effect standardization.

15. Section 1002.243 is amended by revising the section heading and paragraph (b) to read as follows:

§ 1002.243 Skim milk and butterfat contained in cream, storage cream, half and half, and skim milk.

(b) Determine the total amount of butterfat in the product on the basis of butterfat tests. In the absence of information establishing the butterfat content, determine the butterfat content by the application of § 1002.230.

16. Section 1002.245 is revised to read as follows:

§ 1002.245 Skim milk and butterfat contained in cultured and flavored milk drinks and in milkshake drinks.

(a) If the weight and the fat test of the product have been established on the basis of available information:

- Determine the total amount of fat in the product on the basis of fat tests and the weight of the product.
- Determine the total weight of the nonmilk ingredients other than water contained in the product and the fat content of such nonmilk ingredients.
- Determine the butterfat content of the product by subtracting from the total fat content of the product, the fat content of the nonmilk products used.
- Determine the skim milk content of the product by subtracting from the total weight of the product, the butterfat content of the product and total weight of the nonmilk ingredients other than water used in the manufacture of the product.

(b) In the absence of information establishing weights or tests, the weight of the product shall be determined in accordance with § 1002.232(b):

- The butterfat content shall be considered to be the same as the butterfat content of the milk products used in the manufacture of the product.

(2) The skim milk content shall be determined by deducting from the total weight of the product the butterfat determined to be contained therein pursuant to paragraph (b)(1) of this section.

17. Section 1002.246 is revised to read as follows:

§ 1002.246 Skim milk equivalent of a concentrated milk product and milk powder.

(a) The skim milk equivalent of a concentrated milk product and milk powder in other source milk receipts shall be determined by multiplying the pounds of concentrated milk product or milk powder by the appropriate product skim equivalent factor pursuant to §§ 1002.233 or 1002.234.

(b) When a concentrated milk product or milk powder is used to fortify fluid milk products or products included in § 1002.41(c)(1), the skim milk equivalent of that portion of such product which is in excess of the volume included in the fortified fluid milk product or product included in § 1002.41(c)(1) shall be determined by multiplying the pounds of concentrated milk product or milk powder by the appropriate Class III skim equivalent factor pursuant to §§ 1002.233 or 1002.234. The skim milk equivalent so determined shall be accounted for as a Class III disposition. Skim milk powder used to fortify fluid milk products and products included in § 1002.41(c)(1) will be considered to contribute no butterfat to the product so fortified.

(c) When concentrated milk or milk powder is reconstituted, the amount by which the skim milk equivalent of the concentrated milk or milk powder exceeds the pounds of reconstituted milk produced, shall be accounted for as a Class III disposition.

18. Section 1002.247 is amended by revising the section heading and replacing the word "nondairy" with the word "nonmilk" in paragraphs (c)(1) and (c)(2), to read as follows:

§ 1002.247 Skim milk equivalent and butterfat content of other manufactured products.

* * * * *

19. Section 1002.260 is amended by revising the section heading, the introductory text, and the introductory text of paragraph (a) to read as follows:

§ 1002.260 Procedure for establishing fluid milk products, products included in § 1002.41(c)(1), and products included in § 1002.41(c)(4) (i) through (iv) dumped.

Fluid milk products, products included in § 1002.41(c)(1), and products included in § 1002.41(c)(4) (i) through (iv) processed by the disposing handler that are dumped may be classified as Class III only to the extent that the following procedure is followed:

(a) The market administrator is given prior notice and the opportunity to verify the fluid milk products, products included in § 1002.41(c)(1), and products included in § 1002.41(c)(4) (i) through (iv) processed by the disposing handler to be dumped.

* * * * *

Dated: September 30, 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-24417 Filed 10-5-93; 8:45 am]

BILLING CODE 3410-02-P

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560-AD44

1993 Specifications for Cotton Bale Packaging Materials

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations with respect to the price support loan programs for upland and extra long staple cotton which are conducted by the Commodity Credit Corporation (CCC) in accordance with The Agricultural Act of 1949 (the 1949 Act), as amended. The amendments made by this interim rule will provide greater clarity, enhance the administration of CCC programs by providing uniformity between CCC price support programs, eliminate obsolete provisions, and more appropriately reflect loan eligibility quality requirements for the 1993 and subsequent year crops.

DATES: Effective on October 6, 1993.

Comments must be received on or before November 5, 1993 in order to be assured of consideration.

ADDRESSES: Submit comments to Director, Cotton, Grain, and Rice Price

Support Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013-2415; telephone 202-720-7641.

FOR FURTHER INFORMATION CONTACT: Philip Sharp, Program Specialist, Cotton, Grain, and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013-2415; telephone 202-720-7988.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512-1

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and it has been determined "nonmajor." It has been determined that the provisions of this interim rule will not result in:

(1) An annual effect on the economy of \$100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this interim rule do not

preempt State laws and are not retroactive. Before any judicial action may be brought with respect to the provisions of this interim rule, administrative appeal remedies at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1427 set forth in this interim rule do not contain any new or revised information collection requirements that require clearance through the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35. The information collection requirements contained in the current regulations at 7 CFR part 1427 have been approved through August 31, 1994, by the OMB under the provisions of 44 U.S.C. chapter 35, and assigned OMB Nos. 0560-0074, 0560-0087, and 0560-0029. Public reporting burden for these collections is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the information collection requirements, including suggestions for reducing the burden, to the Department of Agriculture, Clearance Office, OIRM, AG Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB Nos. 0560-0074, 0560-0087, and 0560-0129), Washington, DC 20503.

Background

The 1949 Act sets forth the statutory authority for CCC price support programs. CCC price support programs are intended to stabilize market prices and provide interim financing and assistance to producers in the orderly marketing of eligible commodities.

This interim rule amends regulations found at 7 CFR part 1427 to provide rules for administering CCC price support programs for the 1993 through 1995 crop years.

This rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of these

regulations prevail. The provisions of this interim rule are not retroactive and prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

On March 31, 1993, the Cotton Marketing Advisory Committee (committee) appointed by the Secretary of Agriculture, adopted a recommendation to the Secretary concerning changes to the system of classification of upland cotton beginning with the 1993 crop year. For 1992 and prior crop years, a component of the classification for upland cotton was based on the combination of color of the cotton and content of leaf in the ginned cotton. The committee recommended that the sign component of color and leaf be separated into separate classification components. The recommendation was approved by the Secretary effective with the 1993 crop year. Accordingly, upland cotton will now be classed separately for color grade and leaf grade.

In addition, for 1992 and prior crop years, the presence of extraneous matter in the ginned upland cotton could result in the overall reduction in the grade of such cotton. Because of the separation of color grade and leaf grade it will no longer be necessary to reduce the grade of the cotton for extraneous matter. Accordingly, this interim rule amends §§ 1427.1(b)(2), 1427.5(b)(1)(iii), and 1427.5(b)(1)(v)(A) to incorporate these changes.

For many years, CCC has approved individuals to act as loan clerks to assist producers in preparing CCC price support loan documents. Generally, these individuals represent businesses to which the producer sold their cotton after the cotton was redeemed from price support loan. Because of the increase in loan deficiency payment applications, several loan clerks requested that CCC also approve such clerks to assist producers in preparing loan deficiency payment documents. CCC has agreed to allow clerks to assist producers in the preparation of such documents.

Accordingly, this interim rule removes the definition of "loan clerk" and adds the definition of "cotton clerk" in § 1427.3 to clarify that cotton clerks approved by CCC may assist producers in preparing both loan and loan deficiency documents, amends § 1427.6(a)(3) to provide that cotton clerks may disburse price support loans, amends § 1427.13 to include loan deficiency payments and correct typographical errors, and amends § 1427.15 to include the provisions for loan deficiency payments.

Each year the Joint Cotton Industry Bale Packaging Committee (JCIBPC) sponsored by the National Cotton Council in cooperation with the American Textile Manufacturers Institute, approves specifications for cotton bale packaging to be used as industry guidelines. Accordingly, this interim rule amends § 1427.5(b)(2)(iii) to change the referenced year from 1992 to 1993 for the Specifications for Cotton Bale Packaging Materials published by the JCIBPC.

This interim rule amends § 1427.5(b)(2)(iv)(A) to correct an error which requires ginners to show the tare weight of each bale on the gin bale tag. This change allows ginners to provide warehousemen the tare weight of the bale without actually entering the tare weight on the gin bale tag.

This interim rule amends § 1427.5(c)(2)(iii)(D) to correct an error. This change clarifies that agents designated by the producer on a CCC-605 to act on behalf of the producer may designate a subsequent agent by a single endorsement of the agent.

This interim rule amends § 1427.5(c)(3) to correct an error and provide that cotton delivered to CCC approved cooperatives shall not be eligible to receive loan deficiency payments if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton.

This interim rule amends § 1427.5(d) to correct an error by removing the requirement that cotton received as payment of fixed or standing rent is ineligible for loan or loan deficiency payment. The general eligibility requirements at § 1427.5 make this provision redundant.

This interim rule amends § 1427.6(c) to reference § 1427.5 for eligibility requirements for clarity.

This interim rule amends § 1427.7(a) to correct a typographical error.

This interim rule amends § 1427.7(b) to correct an error and to clarify that if upland or ELS cotton loans are extended for an additional 8-month period the producer shall pay to CCC, if forfeited to CCC, all storage costs associated with the storage of the forfeited cotton and one dollar per bale.

This interim rule amends § 1427.8(d) to correct an error by removing the reference to AMS Form A-1.

This interim rule amends § 1427.9 to correct errors by clarifying the classification requirements. In addition, for 1992 and prior crop years, CCC required that the cotton be classed not more than 15 days before the date the warehouse receipt was issued. CCC has determined that this provision is not

necessary and is an undue burden on the producer. Accordingly, § 1427.9 is amended to remove the requirement that cotton must be classed not more than 15 days prior to the date the warehouse receipt was issued.

This interim rule amends §§ 1427.11(f)(2) and 1427.11(g)(3) to correct an error by clarifying that alterations in the gross weight will be accepted if the warehouse receipt bears CCC approved wording and to correct typographical errors.

This interim rule amends § 1427.12 to correct an error by clarifying that lien waivers must be obtained before disbursement of CCC price support loans if there are any liens or encumbrances on the cotton tendered as collateral.

Loan and loan deficiency payment proceeds are subject to offset or provided according to §§ 1427.14(b) and 1427.168(b). Accordingly, this interim rule amends §§ 1427.14 and 1427.168 by removing paragraph (a) in each section references to offsets applicable to farm-storage facilities or dyeing equipment loans.

This interim rule amends § 1427.17 to correct an error by removing the reference to cotton classification memoranda.

7 CFR part 1421 of this chapter provide the regulations governing CCC price support loans and loan deficiency payments for wheat, feed grains, rice, and oilseeds. For these commodities, CCC has determined that producers who violate the terms and condition of the loan note and security agreements or the loan deficiency payment application will cause harm or damage to CCC in that funds may be disbursed to producers for a quantity of the commodity which is not in existence or for a quantity on which the producer is not eligible. In the past these provisions have not applied to cotton, however, recent instances of incorrect certification by a few producers has pointed out this discrepancy. Accordingly, in an effort to further program integrity and to be consistent with the provisions applicable to other commodities this interim rule amends § 1427.18 and adds § 1427.175 to add liquidated damages that are applicable if a county committee determines that the producer has violated the terms or conditions of their loan note or loan deficiency payment application.

This interim rule also amends § 1427.18 to correct an error by clarifying the manner by which CCC will determine the value of loan collateral delivered or acquired by CCC that is not eligible to be forfeited to CCC in settlement of the loan.

This interim rule amends the introductory text of § 1427.19(b) to correct an error by removing references to classification memoranda.

This interim rule amends § 1427.23(b)(3) to add reference to Form CCC-709 used in requesting a loan deficiency payment on gin direct cotton that had been inadvertently omitted.

This interim rule amends §§ 1427.160(c) and 1427.160(d) to correct an error by clarifying that approved cooperative marketing associations must, unless otherwise authorized by CCC, request seed cotton loans at a central county office designated by the applicable State committee and to correct a typographical error.

This interim rule amends § 1427.163(b) to correct an error by clarifying that if a seed loan disbursement check is negotiated, repayment shall include interest.

This interim rule amends § 1427.165(b) to correct an error by removing references to AMS Forms 1 and 3.

This interim rule amends § 1427.168 by removing paragraph (c). This has been incorporated in § 1427.172(b)(3).

This interim rule amends § 1427.172(b)(3) to incorporate the provisions removed from § 1427.168 which requires that proceeds of a warehouse stored loan or loan deficiency payment on the lint cotton ginned from the seed cotton loan collateral must be used to satisfy the outstanding seed cotton loan.

This interim rule amends § 1427.172(b)(4) to correct an error by clarifying that an approved cooperative must repay the seed cotton loan before the applicable lint cotton can be pledged for loan or before a loan deficiency payment can be approved.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly 7 CFR part 1427 is amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444-2; 15 U.S.C. 714b and 714c.

2. Section 1427.1 is amended by:

- A. Revising paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii), and
- B. Adding paragraph (b)(2)(iv) to read as follows:

§ 1427.1 Applicability.

- * * * * *
- (b) * * *
- (2) * * *

- (i) Grade, staple, and leaf,
- (ii) Micronaire,
- (iii) Strength, and
- (iv) Bark and other extraneous matter.

3. Section 1427.3 is amended by removing the definition of *Loan clerk* and adding the definition of *Cotton clerk* to read as follows:

§ 1427.3 Definitions.

* * * * *

Cotton clerk means a person approved by CCC to assist producers in preparing loan and loan deficiency documents.

* * * * *

4. Section 1427.5 is amended by:

- A. Revising paragraph (a),
- B. Revising the introductory text of paragraph (b)(1)(iii),
- C. Revising paragraph (b)(1)(iii)(A),
- D. Adding paragraph (b)(1)(iii)(D),
- E. Revising paragraph (b)(1)(v)(A),
- F. Revising paragraphs (b)(2)(iii), (b)(2)(iii)(A), and (b)(2)(iv)(A),
- G. Revising paragraph (c)(2)(iii)(D) and (c)(3), and
- H. Revising paragraph (d) to read as follows:

§ 1427.5 General eligibility requirements.

(a) In order to receive price support for a crop of cotton, a producer must execute a note and security agreement or loan deficiency payment application on or before May 31 of the year following the year in which such crop is normally harvested. A Form A loan must be signed by the producer or producer's agent and mailed or delivered to the county office or an authorized LSA within 15 calendar days after the producer signs the Form A loan and within the period of loan availability. A producer, except for a cooperative, must request price support and loan deficiency payments:

- (1) At the county office which, in accordance with part 719 of this title, is responsible for administering programs for the farm on which the cotton was produced, or
 - (2) From an authorized LSA.
- (b)(1) * * *
- (iii) For upland cotton, be a grade, staple length, leaf, micronaire, strength, and bark specified in:
 - (A) The schedule of premiums and discounts for grade, staple, and leaf.
 - * * * * *
 - (D) The schedule of bark discounts.
 - * * * * *
 - (v) * * *

(A) Upland cotton must not have a strength reading of 18 grams per tex, rounded to whole grams, or below.

* * * * *

(2) * * *

(iii) Be packaged in materials which meet specifications adopted by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging materials in the June 1993 Specifications for Cotton Bale Packaging Materials. Heads of bales must be completely covered.

(A) Copies of the June 1993 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available upon request at the county office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Copies may be inspected at the South Agriculture Building, room 3623, 14th and Independence Ave. SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

* * * * *

(iv) * * *

(A) Who has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag or otherwise furnish warehousemen the tare weight, and

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(D) Allows agents so designated by the producer to designate a subsequent agent by endorsement of the form by the agent.

* * * * *

(3) If price support is made available to producers through an approved marketing cooperative in accordance with part 1425 of this chapter, the beneficial interest in the cotton must always have been in the producer-member who delivered the cotton to the cooperative or its member cooperative, except as otherwise provided in this section. Cotton delivered to such a cooperative shall not be eligible to receive a loan or a loan deficiency payment if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton as provided in part 1425 of this chapter.

(d) If the person tendering cotton for a loan or a loan deficiency payment is a landowner, landlord, tenant, or sharecropper, such cotton must represent such person's separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper.

* * * * *
 5. Section 1427.6 is amended by:
 A. Revising paragraph (a)(3), and
 B. Revising paragraph (c) to read as follows:

§ 1427.6 Disbursement of price support loans.

(a) * * *
 (3) An approved cotton clerk who has entered into a written agreement with CCC on Form CCC-810.

* * * * *
 (c) The loan documents shall not be presented for disbursement unless the commodity covered by the mortgage or pledged as security is eligible in accordance with § 1427.5. If the commodity was not an eligible commodity at the time of disbursement, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

6. Section 1427.7 is amended by:
 A. Revising the introductory text of paragraph (a), and
 B. Revising the introductory text of paragraph (b) to read as follows:

§ 1427.7 Maturity of loans.

(a) Form A cotton loans and Form G loans to cotton cooperative marketing associations mature on demand by CCC and no later than the last day of the 10th calendar month from the first day of the month in which the loan or loan advance is disbursed, except that:

* * * * *
 (b) If a producer's cotton price support loan is extended for 8 months in accordance with paragraphs (a) (1) and (2) of this section and the loan collateral is:

* * * * *
 7. Section 1427.8 is amended by revising paragraph (d) to read as follows:

§ 1427.8 Amount of loan.

* * * * *
 (d) CCC will not increase the amount of the loan made with respect to any bale of cotton as a result of a redetermination of the quantity or quality of the bale after it is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made with respect to the weight of the bale or the classification

for the bale, such error may be corrected.

8. Section 1427.9 is amended by:
 A. Revising paragraph (a),
 B. Revising paragraph (b),
 C. Revising paragraph (c),
 D. Removing paragraph (e), and
 E. Redesignating paragraph (f) as paragraph (e) and revising redesignated paragraph (e) to read as follows:

§ 1427.9 Classification of cotton.

* * * * *
 (a) An AMS cotton classification or other entity's classification acceptable by CCC showing the classification of a bale must be based upon a representative sample drawn from the bale in accordance with instructions to samplers drawing samples under the Smith-Doxey program.

(b) If the producer's cotton has not been classed or sampled in a manner acceptable by CCC, the warehouse shall sample such cotton and forward the samples to the Cotton Classing Office or other entity approved by CCC serving the district in which the cotton is located. Such warehouse must be licensed by AMS or be an entity approved by CCC to draw samples for submission to the Cotton Classing Office or other entity approved by CCC.

(c) If a sample has been submitted for classification, another sample shall not be drawn and forwarded to a Cotton Classing Office or other entity approved by CCC except for a review classification.

* * * * *
 (e) If a review classification is obtained, the loan value of the cotton represented thereby will be based on such review classification.

9. Section 1427.11 is amended by:
 A. Revising paragraph (f)(2), and
 B. Revising paragraph (g)(3) to read as follows:

§ 1427.11 Warehouse receipt and insurance.

* * * * *
 (f) * * *
 (1) * * *
 (2) The tare shown on the receipt shall be the tare furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A warehouse receipt reflecting an alteration in gross, tare, or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:
 Corrected (gross, tare, or net) weight
 (Name of warehouse)
 By (Signature or initials)

Date

* * * * *
 (g) * * *

(3) If the receipt does not show that receiving charges have been paid or waived, CCC shall reduce the loan amount by the amount of the receiving charges specified in the storage agreement between the warehouse and CCC. However, except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if receiving charges due on the bale include a charge, if any, for a new set of ties for compressing flat bales tied with ties which cannot be reused, the warehouse receipt must show such receiving charges and state: "Receiving charges due include charge for new set of ties", or similar notation, and CCC shall reduce the loan amount by the amount of the receiving charges shown on the warehouse receipt (this will be the amount payable by CCC if it pays for receiving, notwithstanding the provisions of the storage agreement).

* * * * *
 10. Section 1427.12 is revised to read as follows:

§ 1427.12 Liens.

If there are any liens or encumbrances on the cotton tendered as collateral for a price support loan, waivers that fully protect the interest of CCC must be obtained before disbursement even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

11. Section 1427.13 is amended by:
 A. Revising paragraph (a),
 B. Revising paragraph (b), and
 C. Revising paragraph (c) to read as follows:

§ 1427.13 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC or, if applicable, to an authorized LSA, at a rate determined by CCC. Any such fee shall be in addition to any cotton clerk fee paid to a cotton clerk in accordance with paragraph (b) of this section. The amount of such fees is available in State and county offices and are shown on the note and security agreement.

(b) Cotton clerks may only charge fees for the preparation of loan or loan deficiency payment documents at the rate determined by CCC.

(1) Such fees may be deducted from the loan or loan deficiency payment proceeds instead of the fees being paid in cash.

(2) The amount of such fees is available in State and county offices and

is shown on the note and security agreement.

(c) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter. All or a portion of such interest may be waived with respect to a quantity of upland cotton which has been redeemed in accordance with § 1427.19 at a level which is less than the principal amount of the loan plus charges and interest.

* * * * *
12. Section 1427.14 is revised to read as follows:

§ 1427.14 Offsets.

If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under regulations in this subpart shall be applied to such indebtedness as provided in part 3 of this title and part 1403 of this chapter.

13. Section 1427.15 is revised to read as follows:

§ 1427.15 Special procedure where funds are advanced.

(a) This special procedure is provided to assist persons or firms which, in the course of their regular business of handling cotton for producers, have made advances to eligible producers on eligible cotton to be placed under loan or to receive a loan deficiency payment. A person, firm, or financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) This special procedure shall apply only:

(1) To loan or LDP documents covering cotton on which a person or firm has advanced to the producers, including payments to prior lienholders and other creditors, the note amounts shown on the Form A loan, except for:

(i) Authorized cotton clerk fees.
(ii) The research and promotion fee to be collected for transmission to the Cotton Board by CCC, and

(iii) CCC loan service charges, and
(2) If such person or firm is entitled to reimbursement from the proceeds of the loans or loan deficiency payments for the amounts advanced and has been authorized by the producer to deliver the loan or loan deficiency payment documents to a county office for disbursement of the loans or loan deficiency payments.

(c)(1) All loan or loan deficiency payment documents shall be mailed or delivered to the appropriate county office and shall show the entire proceeds of the loans or loan deficiency

payments, except for CCC loan service charges and research and promotion fee, for disbursement to:

(i) The financial institution which is to allow credit to the person or firm which made the loan or loan deficiency payment advances or to such financial institution and such person or firm as joint payees, or

(ii) The person, firm, or financial institution which made the loan or loan deficiency payment advances to the producers.

(2) When received in a county office warehouse receipts and loan documents must reflect not more than 60 days accrued storage, or the loan amount must be reduced by the excess storage as specified in § 1427.11.

(3) The documents shall be accompanied by Form CCC-825, Transmittal Schedule of Loan and Loan Deficiency Payment Documents, in original and two copies, numbered serially for each county office by the person, firm, or financial institution which made the loan or loan deficiency payment advance. The Form CCC-825 shall show the amounts invested by the person, firm, or financial institution in the loans or loan deficiency payments.

(4) Upon receipt of the loan or loan deficiency payment documents and Form CCC-825, the county office will stamp one copy of the Form CCC-825 to indicate receipt of the documents and return this copy to the person, firm, or financial institution.

(d) County offices will review the loan or loan deficiency payment documents prior to disbursement and will return to the person, firm, or financial institution any documents determined not to be acceptable because of errors or illegibility. County offices will disburse the loans or loan deficiency payments for which loan or loan deficiency payment documents are acceptable by issuance of one check to the payee indicated on the applicable form and will mail the check to the address shown for such payee on the applicable form with a copy of Form CCC-825. The Form CCC-825 will show the date of disbursement by a county office and amount of interest earned by the person, firm, or financial institution.

(e) The person, firm, or financial institution shall be deemed to have invested funds in the loans or loan deficiency payment as of the date loan or loan deficiency payment documents acceptable to CCC were delivered to a county office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in a county office if no postmark date is shown. Patron postage meter date stamp will not be recognized as a postmark date.

(f) Interest will be computed on the total amount invested by the person, firm, or financial institution in the loan or loan deficiency payment represented by accepted documents from and including the date of investment of funds by the person, firm, or financial institution to, but not including, the date of disbursement by a county office.

(1) Interest will be paid at the rate in effect for CCC loans as provided in part 1405 of this chapter.

(2) Interest earned by the person, firm, or financial institution on the investment in loans disbursed during a month will be paid by county offices after the end of the month.

14. Section 1427.17 is revised to read as follows:

§ 1427.17 Custodial offices.

Forms CCC-Cotton A and CCC-Cotton A-1, collateral warehouse receipts and related documents will be maintained in custody of the local county office, authorized LSA, or any financial institution defined in § 1427.3 and approved by CCC, whichever disbursed the loan evidenced by such documents.

15. Section 1427.18 is amended by:

A. Removing the comma and the word "and" at the end of paragraph (a)(1)(iv) and inserting a semicolon,

B. Redesignating paragraph (a)(1)(v) as paragraph (a)(1)(vi),

C. Adding a new paragraph (a)(1)(v),

D. Revising paragraph (a)(2),

E. Revising paragraph (d), and

F. Adding paragraphs (e) through (i) to read as follows:

§ 1427.18 Liability of the producer.

(a)(1) * * *

(v) Liquidated damages in accordance with paragraph (e) of this section, and

* * * * *

(2) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral delivered to or acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

* * * * *

(d) If more than one producer executes a note and security agreement or loan deficiency payment application with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement or loan deficiency payment application and the regulations set forth in this part. Each such producer shall also remain liable

for repayment of the entire loan or loan deficiency payment amount until the loan is fully repaid without regard to such producer's claimed share in the cotton pledged as collateral for the loan or for which the loan deficiency payment was made. In addition, such producer may not amend the note and security agreement or loan deficiency payment application with respect to the producer's claimed share in such cotton, or loan proceeds, after execution of the note and security agreement or loan deficiency payment application by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining, or settling a loan or disposing of or moving the loan collateral without the prior written approval of CCC. Accordingly, if the county committee determines that the producer has violated the terms or conditions of Form CCC-Cotton A, Form CCC-Cotton AA, or Form CCC-709, as applicable, the producer shall pay to CCC as liquidated damages an amount computed by multiplying the quantity applicable to the violation by:

(1) For the first offense, if the county committee determines the producer acted in good faith when the violation occurred, 20 percent of the loan rate applicable to the loan note or the loan deficiency payment rate;

(2) For the second offense, if the county committee determines the producer acted in good faith when the violation occurred, 50 percent of the loan rate applicable to the loan note or the loan deficiency payment rate;

(3) For any offense other than the first or second offense including any offense for which the county committee cannot determine the producer acted in good faith when the violation occurred, 50 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(f) For first and second offenses, if the county committee determines that a producer acted in good faith when the violation occurred, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity affected by the violation or for loan deficiency payment, the loan deficiency payment amount applicable to the loan deficiency quantity involved with the violation, and charges plus interest applicable to the amount repaid; and

(2) Assess liquidated damages in accordance with paragraph (e) of this section. If the producer fails to pay such amount within 30 calendar days from

the date of notification, the county committee shall:

(i) Cancel the applicable liquidated damages assessed in accordance with paragraph (e) of this section;

(ii) Call the applicable loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, or for loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest.

(g) For cases other than first or second offense or any offense for which the county committee cannot determine good faith when the violation occurred, the county committee shall:

(1) Assess liquidated damages in accordance with paragraph (e) of this section;

(2) Call the applicable loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, or for loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest.

(h) If the county committee determines that the producer has committed a violation in accordance with paragraph (e) of this section, the county committee shall notify the producer in writing that:

(1) The producer has 15 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the county committee, and

(2) Administrative actions will be taken in accordance with paragraph (f) or (g) of this section.

(i) If the loan is called in accordance with this section, the producer may not repay the loan at the lower of the loan repayment rate in accordance with § 1427.19 and may not utilize the provisions of part 1470 of this chapter with respect to such loan.

16. Section 1427.19 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 1427.19 Repayment of price support loans.

* * * * *

(b) A producer or agent or subsequent agent authorized on Form CCC-605, may redeem one or more bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being redeemed determined in accordance with this section. CCC, upon proper payment for the amount due, shall release the warehouse receipts applicable to such cotton. The producer may also request that the warehouse

receipts be forwarded to a bank for payment, in which case:

* * * * *

17. Section 1427.23 is amended by revising paragraph (b)(3) to read as follows:

§ 1427.23 Cotton loan deficiency payments.

* * * * *

(b) * * *

(3) File a request for payment for a quantity of eligible cotton in accordance with § 1427.5(a) on CCC Form CCC-Cotton AA, Form CCC-709, or other form approved by CCC;

* * * * *

18. Section 1427.160 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1427.160 General statement.

* * * * *

(c) A producer must, unless otherwise authorized by CCC, request price support at the county office which, in accordance with part 719 of this title, is responsible for administering programs for the farm on which the cotton was produced. An approved cooperative marketing association must, unless otherwise authorized by CCC, request price support at a central county office designated by the State committee. All note and security agreements and related documents necessary for the administration of the seed cotton loan program shall be determined by CCC and are available at State and county offices.

(d) Price support loans shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

19. Section 1427.163 is amended by revising paragraph (b) to read as follows:

§ 1427.163 Disbursement of loans.

* * * * *

(b) Disbursement of each loan will be made by the county office of the county which is responsible for administering programs for the farm on which the cotton was produced except that approved cooperatives designated by producers to obtain loans in their behalf may obtain disbursement of loans at a central county office designated by the State committee. Service charges shall be deducted from the loan proceeds. The producer or the producer's agent shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent shall

immediately return the check issued in payment of the loan or, if the check has been negotiated, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

20. Section 1427.165 is amended by revising paragraph (b) to read as follows:

§ 1427.165 Eligible seed cotton.

* * * * *

(b) The quality of cotton which may be pledged as collateral for a loan shall be the estimated quality of lint cotton in each lot of seed cotton as determined by the county office, except that if a control sample of the lot of cotton is classed by an Agricultural Marketing Service (AMS), Cotton Classing Office or other entity approved by CCC, the quality for the lot shall be the quality shown on the applicable documentation issued for the control sample.

* * * * *

21. Section 1427.168 is revised to read as follows:

§ 1427.168 Offsets.

If the producer is indebted to CCC or any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under regulations in this subpart shall be applied to such indebtedness as provided in part 3 of this title and part 1403 of this chapter.

22. Section 1427.172 is amended by:

- A. Revising paragraph (b)(3), and
- B. Revising introductory text of paragraph (b)(4) and revising paragraphs (b)(4)(i) and (b)(4)(ii) to read as follows:

§ 1427.172 Settlement.

* * * * *

(b) * * *

(3) A producer, except a cooperative, may obtain a warehouse stored loan or loan deficiency payment in accordance with this part, on the lint cotton, but:

(i) The loan, interest, and charges on the seed cotton must be satisfied out of the proceeds of the warehouse stored loan.

(ii) The loan deficiency payment must be applied towards the loan amount, interest, and charges on the outstanding seed cotton loan.

(4) An approved cooperative must repay the seed cotton loan, interest, and charges before pledging the cotton for a warehouse stored loan or before a loan deficiency payment can be approved on the lint cotton. If approved cooperatives authorized by producers to obtain loans in their behalf remove seed cotton from storage prior to obtaining approval to move such cotton, such removal shall constitute conversion of such cotton unless the cooperative:

(i) Notifies the county office in writing the following morning by mail or otherwise that such cotton has been moved and is on the gin yard;

(ii) Furnishes CCC an irrevocable letter of credit if requested; and

* * * * *

23. Section 1427.175 is added to read as follows:

§ 1427.175 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan or in maintaining, or settling a loan or disposes of or moves the loan collateral without the prior written approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

- (i) The amount of the loan;
- (ii) Any additional amounts paid by CCC with respect to the loan;
- (iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;
- (iv) Applicable interest on such amounts,
- (v) Liquidated damages in accordance with paragraph (e) of this section, and
- (vi) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC.

(2) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral delivered to or acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a loan, or in settlement thereof, exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess, plus interest. In addition, the commodity pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement and the regulations set forth in this part. Each

such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the cotton pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such cotton, or loan proceeds, after execution of the note and security agreement by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for if a producer makes any fraudulent representation in obtaining a loan or in maintaining, or settling a loan or disposing of or moving the loan collateral without the prior written approval of CCC. Accordingly, if the county committee determines that the producer has violated the terms or conditions of the note and security agreement, the producer shall pay to CCC as liquidated damages an amount computed by multiplying the quantity applicable to the violation by:

- (1) For the first offense, if the county committee determines the producer acted in good faith when the violation occurred, 20 percent of the loan rate applicable to the loan note;
- (2) For the second offense, if the county committee determines the producer acted in good faith when the violation occurred, 50 percent of the loan rate applicable to the loan note;
- (3) For any offense other than the first or second offense including any offense for which the county committee cannot determine the producer acted in good faith when the violation occurred, 50 percent of the loan rate applicable to the loan note.

(f) For first and second offenses, if the county committee determines that a producer acted in good faith when the violation occurred, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity affected by the violation, and charges plus interest applicable to the amount repaid; and

(2) Assess liquidated damages in accordance with paragraph (e) of this section. If the producer fails to pay such amount with 30 calendar days from the date of notification, the county committee shall:

(i) Cancel the applicable liquidated damages assessed in accordance with paragraph (e) of this section;

(ii) Call the applicable loan involved in the violation.

(g) For cases other than first or second offense or any offense for which the county committee cannot determine

good faith when the violation occurred, the county committee shall:

(1) Assess liquidated damages in accordance with paragraph (e) of this section;

(2) Call the applicable loan involved in the violation.

(h) If the county committee determines that the producer has committed a violation in accordance with paragraph (e) of this section, the county committee shall notify the producer in writing that:

(1) The producer has 15 calendar days to provide evidence and information to the county committee regarding the circumstances which caused the violation, and

(2) Administrative actions will be taken in accordance with paragraph (f) or (g) of this section.

Signed in Washington, DC, on September 29, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93-24528 Filed 10-5-93; 8:45 am]

BILLING CODE 3410-05-P

FARM CREDIT ADMINISTRATION

12 CFR Part 618

RIN 3052-AB39

General Provisions; Releasing Information

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board) adopts a final rule amending its regulation governing the release of information by Farm Credit System (System) directors, officers and employees. The FCA's final collateral evaluation regulations, published on November 20, 1992, conflict with the requirements of the regulation concerning release of appraisal information. The amendments to the regulation would allow information concerning borrowers and loan applicants to be given by a Farm Credit institution for the confidential use of authorized representatives of any State certifying and licensing agency, in contemplation of State certification and licensure of a System employee as a real estate appraiser.

EFFECTIVE DATE: The regulation shall become effective upon expiration of 30 days after this publication in the *Federal Register* during which either or both Houses of Congress are in session.

Notice of the effective date will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: In connection with the FCA's final collateral evaluation regulations (part 614, subpart F), the FCA received public comments noting that application requirements of some State appraiser certifying and licensing agencies conflict with requirements of § 618.8320 relating to the release of information regarding borrowers and loan applicants. See 57 FR 54683, November 20, 1992. The commenters asserted that several State certifying and licensing agencies established in compliance with title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) require that applicants agree to provide the agencies copies of appraisal reports they have prepared, which may include borrower information, in support of their applications. Compliance with such an application requirement by a System employee would cause the employee to violate paragraph (a) of § 618.8320 of existing regulations, which requires that letters and statements relative to the property of borrowers and loan applicants be held in strict confidence by directors, officers, and employees of every bank and association. Paragraph (a) identifies reports of inspectors and appraisers as documents that are prohibited from being exhibited or quoted, subject to exceptions identified by paragraph (b) of § 618.8320. Existing § 618.8320(b) does not authorize the release of appraisal reports for the purposes for which the State certifying and licensing agencies are requiring the information. Proposed amendments to the regulation were published in the *Federal Register* (57 FR 53453) on November 10, 1992.

The comment period for the proposed amendments to § 618.8320 closed on December 10, 1992. The FCA received one letter commenting on the proposed regulations. The Farm Credit Council (Council), on behalf of its membership, provided comments which generally supported the proposed amendments. Additionally, the Council offered suggestions for further clarification of the proposed amendments.

The Council commented that it is unreasonable to expect System entities to be able to determine whether a State's certification and licensing program

makes reasonable provisions for protecting the confidentiality of borrower information. FCA disagrees and provides the following as clarification of its expectations.

The proposed § 618.8320(b)(10) requires each Farm Credit institution to determine that the State certification and licensing program makes reasonable provisions for protecting the confidentiality of the borrower information contained in the appraisal report. The FCA proposed this paragraph to ensure that borrower confidentiality is not compromised. The FCA believes that confidentiality of certain borrower information contained in an appraisal report should be protected and that Farm Credit institutions should review the State's certification and licensing program to determine that reasonable provisions for protecting confidentiality have been included before releasing such information. A determination of "reasonable provisions" might include an assessment of specific information required by the State's certification and licensing program and whether or not the State's program provides that confidentiality of records will be maintained. Such assurances might be included in specific policies and procedures of the State agency addressing the maintenance of the information or a letter from the State agency describing the handling of the information as confidential.

The System institution should take appropriate steps to protect the confidentiality of any borrower information that is not essential to the State's evaluation of the application. Appropriate steps might include redacting identifying borrower information that is not essential to the State's evaluation of the application.

The Council also requested further clarification of the word "certifies" in proposed § 618.8320(b)(10). As used in the proposed regulation, the word "certifies" refers to written documentation that verifies that appraisal information is being provided in connection with an employee's application for State certification and licensure for a real estate appraiser. Such written documentation should be maintained in a general or other appropriate file of the institution and should include a copy or listing of the information provided to the State agency and certification by the institution that the information is being provided in connection with an employee's application for State certification and licensure.

After reviewing the Council's comments, the FCA adopts the

regulation in final without change, with additional direction and clarification provided by this preamble.

List of Subjects in 12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, part 618 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 618—GENERAL PROVISIONS

1. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252.

Subpart G—Releasing Information

2. Section 618.8320 is amended by redesignating paragraph (b)(10) as new paragraph (b)(10)(i) and by adding a new paragraph (b)(10)(ii) to read as follows:

§ 618.8320 Data regarding borrowers and loan applicants.

* * * * *

(b) * * *

(10)(i) * * *

(ii) Information concerning borrowers contained in an appraisal report may be given by a Farm Credit institution to any State agency certifying and licensing real estate appraisers provided that the Farm Credit institution:

(A) Certifies that the information is required in connection with an employee's application for certification and licensure and that the institution has taken appropriate steps to protect the confidentiality of any borrower information that is not essential to the State's evaluation of the application; and

(B) Determines that the State certification and licensing program makes reasonable provisions for protecting the confidentiality of the borrower information contained in the appraisal report.

* * * * *

Dated: September 28, 1993.

Curtis M. Anderson,
Secretary, Farm Credit Administration Board.
[FR Doc. 93-24469 Filed 10-5-93; 8:45 am]
BILLING CODE 6765-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 90F-0225]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dimethylamine-epichlorohydrin copolymer as a sizing agent in the manufacture of paper and paperboard products intended for use in contact with food. This action responds to a food additive petition filed by Albright and Wilson Americas.

DATES: Effective October 6, 1993; written objections and requests for a hearing by November 5, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of July 30, 1990 (55 FR 30983), FDA announced that a food additive petition (FAP 0B4215) had been filed by Albright and Wilson Americas, c/o Delta Analytical Corp., 7910 Woodmont Ave., suite 1000, Bethesda, MD 29814 (former address 1414 Fenwick Lane, Silver Spring, MD 20910), proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of dimethylamine-epichlorohydrin copolymer as a sizing agent in the manufacture of paper and paperboard intended for use in contact with food.

In its evaluation of the safety of the petitioned additive, FDA has reviewed the safety of the additive itself and the starting materials used to manufacture the additive. Although the additive (dimethylamine-epichlorohydrin copolymer) itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted epichlorohydrin, a carcinogenic reactant used in the manufacture of the additive. Residual amounts of reactants and

manufacturing aids, such as epichlorohydrin, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of the additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance" (H. Rept. 2284, 85th Cong., 2d sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer, or Delaney, clause of the act (section 409(c)(3)(A)) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole has not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the *Federal Register* of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that has not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott v. FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of the Petitioned Use

FDA estimates that the petitioned use of the additive dimethylamine-epichlorohydrin copolymer will result in levels of exposure to the additive of no greater than 85 parts per billion in the daily diet. FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here.

A. The Impurity, Epichlorohydrin

Because dimethylamine-epichlorohydrin copolymer, which contains epichlorohydrin, has not been shown to cause cancer, the anticancer provision does not apply. However, FDA has further evaluated the safety of the additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime risk presented by the carcinogenic chemical, epichlorohydrin, that may be present as an impurity in the additive.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see 49 FR 13018 at 13019, April 2, 1984). The risk evaluation of the carcinogenic impurity, epichlorohydrin, has two aspects: (1) Assessment of the exposure to the impurity from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassay to the conditions of probable exposure to humans.

Based on the fraction of the daily diet that may be in contact with paper food-contact surfaces containing dimethylamine-epichlorohydrin copolymer and on the level of epichlorohydrin that may be present in the additive, FDA estimated the worst-case exposure to epichlorohydrin from the petitioned use of the additive in the

manufacture of paper and paperboard contacting aqueous and fatty foods to be 1.6 micrograms per person per day ($\mu\text{g}/\text{person}/\text{day}$) (Ref. 3). The agency used data from a Japanese carcinogenesis bioassay (Ref. 4) on epichlorohydrin fed to rats via their drinking water to estimate the upper-bound limit of lifetime human risk from exposure to this chemical stemming from the proposed use of the additive. The results of the bioassay demonstrated that epichlorohydrin was carcinogenic under the conditions of the study. The test material caused significantly increased incidences of stomach papillomas and carcinomas in the rats.

The Center for Food Safety and Applied Nutrition reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on epichlorohydrin. The center further concluded that an estimate of the upper-bound lifetime human risk from potential exposure to epichlorohydrin resulting from the proposed use of the additive could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the study with rats to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions of use of the food additive.

Based on a worst-case exposure of 1.6 $\mu\text{g}/\text{person}/\text{day}$, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to epichlorohydrin resulting from the use of dimethylamine-epichlorohydrin copolymer is 7.2×10^{-8} , or 7.2 in 100 million (Ref. 5). Because of the numerous conservatisms in the exposure estimate, actual lifetime averaged individual daily exposure to epichlorohydrin is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to epichlorohydrin that might result from the proposed use of the additive.

B. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of epichlorohydrin in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the low level at which epichlorohydrin may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely small levels; and (2) the upper-bound limit of lifetime risk from exposure to this impurity, even under worst-case assumptions, is very low, less than 7.2 in 100 million.

III. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use of the additive in paper and paperboard products in contact with aqueous and fatty foods is safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect. Therefore, § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before November 5, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each

numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogen Testing Programs," in "Food Safety: Where are We?," Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.
2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in "Chemical Safety Regulation and Compliance," edited by F. Homburger, J. K. Marquis, and S. Karger, New York, NY, pp. 24-33, 1985.
3. Memorandum from the Food and Color Additive Review Section (HFF-415) to the Indirect Additives Branch (HFF-335), concerning FAP 0B4215—Albright and Wilson Americas—exposure to the additive and its components, October 10, 1990.
4. Konishi, Y. et al., "Forestomach Tumors Induced by Orally Administered Epichlorohydrin in Male Wistar Rats," Gann 71: 922-923, 1980.
5. Memorandum from Quantitative Risk Assessment Committee, Center for Food Safety and Applied Nutrition, concerning epichlorohydrin, FAP 0B4215, June 6, 1991.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 is revised to read as follows:
Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 CFR U.S.C. 321, 342, 346, 348, 379(e)).
2. Section 176.170 is amended in the table in paragraph (a)(5) by revising the entry for "Dimethylamine-epichlorohydrin copolymer * * *" under the heading "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

	*	*	*	*	*
(a)	*	*	*		
(5)	*	*	*		

List of Substances	Limitations
Dimethylamine-epichlorohydrin copolymer in which not more than 5 mole-percent of dimethylamine may be replaced by an equimolar amount of ethylenediamine and in which the ratio of total amine to epichlorohydrin does not exceed 1:1. The nitrogen content of the copolymer shall be 9.4 to 10.8 weight percent on a dry basis and a 10 percent by weight aqueous solution of the final product has a minimum viscosity of 5.0 centipoises at 25°C, as determined by LVT-series Brookfield viscometer using a No.1 spindle at 60 r.p.m. (or by other equivalent method)..	For use only: 1. As a retention-aid employed before the sheet-forming operation in the manufacture of paper and paperboard and limited to use at a level not to exceed 1 percent by weight of the finished paper and paperboard. 2. At the size press at a level not to exceed 0.017 percent by weight of the finished paper and paperboard.

* * * * *

Dated: September 30, 1993.
Michael R. Taylor,
Deputy Commissioner for Policy.
 [FR Doc. 93-24473 Filed 10-5-93; 8:45 am]
 BILLING CODE 4160-01-F

DEPARTMENT OF DEFENSE
Office of the Secretary
32 CFR Part 80
Provision of Early Intervention Services to Eligible Infants and Toddlers With Disabilities and Their Families, and Special Education and Related Services to Children With Disabilities Within the Section 6 School Arrangements
AGENCY: Office of the Secretary, DoD.
ACTION: Interim final rule.
SUMMARY: This interim final rule provides guidance implementing the Individuals with Disabilities Education Act (IDEA), as amended, in the Section 6 Schools and for eligible infants and toddlers in the United States.

DATES: This part is effective October 6, 1993. Written comments on this interim final rule must be received by November 5, 1993.
ADDRESSES: Forward comments to the Office of Section 6 Schools, Crystal Gateway #2, suite 1500, 1225 Jefferson Davis Highway, Arlington, VA 22202.
FOR FURTHER INFORMATION CONTACT: Dr. Hector O. Nevarez, Director, Section 6 Schools, on (703) 746-7875/7874.
SUPPLEMENTARY INFORMATION: It has been determined that this interim final rule complies with: (1) Executive Order 12291, "Federal Regulation" because the interim final rule does not:
 (a) Have an annual effect on the economy of \$100 million or more.
 (b) Cause a major increase in costs or prices for consumers, individual

industries, Federal, State, or local government agencies, or geographic regions; or

(c) Have a significant adverse effect on competition, employment, investment, productivity, or innovation;

(2) Public Law 96-354, "Regulatory Flexibility Act," does not apply because the interim final rule does not have a significant economic impact on a substantial number of small entities. The primary effect of this interim final rule will be a reduction in administrative costs and other burdens resulting from the simplification and clarification of policies.

(3) Public Law 96-511, "Paperwork Reduction Act," does not apply because the interim final rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

This interim final rule is issued to provide guidance, required by statute, with respect to (1) the implementation of the IDEA, as amended, in the DoD Section 6 Schools and (2) the provision of early intervention services to infants and toddlers who, but for their age, would be entitled to enroll in such Section 6 Schools. This interim final rule is intended to provide that guidance as soon as possible in school year 1993-94. The DoD invites public comments on this interim final rule. It shall consider those comments in deciding whether, and, if so, how, to amend this interim final rule.

List of Subjects in 32 CFR Part 80

Education of individuals with disabilities, Individuals with disabilities, Infants and children.

Accordingly, title 32, chapter I, subchapter C, is amended to add part 80 to read as follows:

PART 80—PROVISION OF EARLY INTERVENTION SERVICES TO ELIGIBLE INFANTS AND TODDLERS WITH DISABILITIES AND THEIR FAMILIES, AND SPECIAL EDUCATION AND RELATED SERVICES TO CHILDREN WITH DISABILITIES WITHIN THE SECTION 6 SCHOOL ARRANGEMENTS

Sec.

- 80.1 Purpose.
- 80.2 Applicability and scope.
- 80.3 Definitions.
- 80.4 Policy.
- 80.5 Responsibilities.
- 80.6 Procedures.

Appendix A to Part 80—Procedures for the Provision of Early Intervention Services for Infants and Toddlers With Disabilities, Ages 0-2 (inclusive), and Their Families

Appendix B to Part 80—Procedures for Special Education Programs (Including Related Services) and for Preschool Children and Children With Disabilities (3-21 years Inclusive)

Appendix C to Part 80—Hearing Procedures

Authority: 20 U.S.C. 1400 *et seq.*; 20 U.S.C. 241; 20 U.S.C. 241 note.

§ 80.1 Purpose.

This part:

(a) Establishes policies and procedures for the provision of early intervention services to infants and toddlers with disabilities (birth to age 2 inclusive) and their families, and special education and related services to children with disabilities (ages 3-21 inclusive) entitled to receive special educational instruction or early intervention services from the Department of Defense under Pub. L. 81-874, sec. 6, as amended; Pub. L. 97-35, sec. 505(c); the Individuals with Disabilities Education Act, Pub. L. 101-476, as amended; Pub. L. 102-119, sec. 23; and consistent with 32 CFR parts 285 and 310, and the Federal Rules of Civil Procedures (28 U.S.C.).

(b) Establishes policy, assigns responsibilities, and prescribes procedures for:

(1) Implementation of a comprehensive, multidisciplinary program of early intervention services for infants and toddlers ages birth through 2 years (inclusive) with disabilities and their families.

(2) Provision of a free, appropriate education including special education and related services for preschool children with disabilities and children with disabilities enrolled in the Department of Defense Section 6 School Arrangements.

(c) Establishes a Domestic Advisory Panel (DAP) on Early Intervention and Education for Infants, Toddlers, Preschool Children and Children with Disabilities, and a DoD Coordinating Committee on Domestic Early Intervention, Special Education and Related Services.

(d) Authorizes the publication of DoD Regulations and Manuals, consistent with DoD 5025.1-M¹, and DoD forms consistent with DoD 5000.12-M² and DoD Directives 8910.1³ to implement this part.

¹ Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

² See footnote 1 to § 80.1 (c).

³ See footnote 1 to § 80.1 (c).

§ 80.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, 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 Agencies (hereafter referred to collectively as "the DoD Components").

(b) Encompasses infants, toddlers, preschool children, and children receiving or entitled to receive early intervention services or special educational instruction from the DoD on installations with Section 6 School Arrangements, and the parents of those individuals with disabilities.

(c) Applies only to schools operated by the Department of Defense within the Continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

§ 80.3 Definitions.

(a) *Assistive technology device.* Any item, piece of equipment, or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(b) *Assistive technology service.* Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. This term includes:

(1) Evaluating the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment.

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities.

(3) Selecting designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices.

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing educational and rehabilitative plans and programs.

(5) Training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities.

(6) Training or technical assistance for professionals (including individuals providing educational rehabilitative services), employers, or other

individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of an individual with a disability.

(c) *Attention deficit disorder (ADD)*. As used to define students, encompasses attention-deficit hyperactivity disorder and attention deficit disorder without hyperactivity. The essential features of this disorder are developmentally inappropriate degrees of inattention, impulsiveness, and hyperactivity.

(1) A diagnosis of ADD may be made only after the child is evaluated by appropriate medical personnel, and evaluation procedures set forth in this part (appendix B to this part) are followed.

(2) A diagnosis of ADD, in and of itself, does not mean that a child requires special education; it is possible that a child diagnosed with ADD, as the only finding, can have his or her educational needs met within the regular education setting.

(3) For a child with ADD to be eligible for special education, the Case Study Committee, with assistance from the medical personnel conducting the evaluation, must then make a determination that the ADD is a chronic or acute health problem that results in limited alertness, which adversely affects educational performance. Children with ADD who are eligible for special education and medically related services will qualify for services under "Other Health Impaired" as described in Criterion A, paragraph (g) (1) of this section.

(d) *Autism*. A developmental disability significantly affecting verbal and non-verbal communication and social interaction generally evident before age 3 that adversely affects educational performance. Characteristics of autism include irregularities and impairments in communication, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not include children with characteristics of the disability of serious emotional disturbance.

(e) *Case Study Committee (CSC)*. A school-based committee that determines a child's eligibility for special education, develops and reviews a child's individualized education program (IEP), and determines appropriate placement in the least restrictive environment. A CSC is uniquely composed for each child. Participants on a CSC must include:

(1) The designated representative of the Section 6 School Arrangement, who is qualified to supervise the provision of special education. Such representative may not be the child's special education teacher.

(2) One, or more, of the child's regular education teachers, if appropriate.

(3) A special education teacher.

(4) One, or both, of the child's parents.

(5) The child, if appropriate.

(6) A member of the evaluation team or another person knowledgeable about the evaluation procedures used with the child.

(7) Other individuals, at the discretion of the parent or the Section 6 School Arrangement, who may have pertinent information.

(f) *Child-find*. The ongoing process used by the Military Services and a Section 6 School Arrangement to seek and identify children (from birth to 21 years of age) who show indications that they might be in need of early intervention services or special education and related services. Child-find activities include the dissemination of information to the public and identification, screening, and referral procedures.

(g) *Children with disabilities ages 5-21 (inclusive)*. Those children ages 5-21 years (inclusive), evaluated in accordance with this part, who are in need of special education as determined by a CSC and who have not been graduated from a high school or who have not completed the requirements for a General Education Diploma. The terms "child" and "student" may also be used to refer to this population. The student must be determined eligible under one of the following four categories:

(1) *Criterion A*. The educational performance of the student is adversely affected, as determined by the CSC, by a physical impairment; visual impairment including blindness; hearing impairment including deafness; orthopedic impairment; or other health impairment, including ADD, when the condition is a chronic or acute health problem that results in limited alertness; autism; and traumatic brain injury requiring environmental and/or academic modifications.

(2) *Criterion B*. A student who manifests a psychoemotional condition that is the primary cause of educational difficulties; a student who exhibits maladaptive behavior to a marked degree and over a long period of time that interferes with skill attainment, classroom functioning or performance, social-emotional condition, and who as a result requires special education. The term does not usually include a student

whose difficulties are primarily the result of:

- (i) Intellectual deficit;
- (ii) Sensory or physical impairment;
- (iii) Attention deficit hyperactivity disorder;
- (iv) Antisocial behavior;
- (v) Parent-child or family problems;
- (vi) Disruptive behavior disorders;
- (vii) Adjustment disorders;
- (viii) Interpersonal or life circumstance problems; or
- (ix) Other problems that are not the result of a severe emotional disorder.

(3) *Criterion C*. The educational performance of the student is adversely affected, as determined by the CSC, by a speech and/or language impairment.

(4) *Criterion D*. The measured academic achievement of the student in math, reading, or language is determined by the CSC to be adversely affected by underlying disabilities (including mental retardation and specific learning disability), including either an intellectual deficit or an information processing deficit.

(h) *Consent*. This term means that:

(1) The parent of an infant, toddler, child, or preschool child with a disability has been fully informed, in his or her native language, or in another mode of communication, of all information relevant to the activity for which permission is sought.

(2) The parent understands and agrees in writing to the implementation of the activity for which his or her permission is sought. The writing must describe that activity, list the child's records that will be released and to whom, and acknowledge that the parent understands consent is voluntary and may be prospectively revoked at any time.

(3) The parent of an infant, toddler, preschool child or child must consent to the release of records. The request for permission must describe that activity, list each individual's records that will be released and to whom, and acknowledge that the parent understands that consent is voluntary and may be prospectively revoked at any time.

(4) The written consent of a parent of an infant or toddler with a disability is necessary for implementation of early intervention services described in the individualized family service plan (IFSP). If such parent does not provide consent with respect to a particular early intervention service, then the early intervention services for which consent is obtained shall be provided.

(i) *Deaf*. A hearing loss or deficit so severe that the child is impaired in processing linguistic information through hearing, with or without

amplification, to the extent that his or her educational performance is adversely affected.

(j) *Deaf-blind*. Concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(k) *Developmental delay*. A significant discrepancy in the actual functioning of an infant or toddler when compared with the functioning of a nondisabled infant or toddler of the same chronological age in any of the following areas of development: Physical development, cognitive development, communication development, social and emotional development, and adaptive development as measured using standardized evaluation instruments and confirmed by clinical observation and judgment. A significant discrepancy exists when the one area of development is delayed by 25 percent or 2 standard deviations or more below the mean or when two areas of development are each delayed by 20 percent of 1½ standard deviations or more below the mean. (Chronological age should be corrected for prematurity.)

(l) *Early intervention program coordination services*. Case management services that include integration and oversight of the scheduling and accomplishment of evaluation and delivery of early intervention services to an infant or toddler with a disability and his or her family.

(m) *Early intervention services*. Developmental services that:

(1) Are provided under the supervision of a military medical department.

(2) Are provided using Military Health Service System resources at no cost to the infant or toddler's parents (but incidental fees (e.g., child care fees) that are normally charged to infants, toddlers, and children without disabilities or their parents may be charged).

(3) Are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development.

(4) Meet the standards developed by the Assistant Secretary of Defense for Health Affairs (ASD(HA)).

(5) Include the following services: Family training, counseling, and home

visits; special instruction; speech pathology and audiology; occupational therapy; physical therapy; psychological services; early intervention program coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; vision services; and social work services. Also included are assistive technology devices and assistive technology services; health services necessary to enable the infant or toddler to benefit from the above early intervention services; and transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive early intervention services.

(6) Are provided by qualified personnel, including: Special educators; speech and language pathologists and audiologists; occupational therapists; physical therapists; psychologists; social workers; nurses; nutritionists; family therapists; orientation and mobility specialists; and pediatricians and other physicians.

(7) To the maximum extent appropriate, are provided in natural environments, including the home and community settings in which infants and toddlers without disabilities participate.

(8) Are provided in conformity with an IFSP.

(n) *Evaluation*. Procedures used to determine whether an individual (birth through 21 inclusive) has a disability under this part and the nature and extent of the early intervention services and special education and related services that the individual needs. These procedures must be used selectively with an individual and may not include basic tests administered to, or used with, all infants, toddlers, preschool children or children in a school, grade, class, program, or other grouping.

(o) *Family training, counseling, and home visits*. Services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler eligible for early intervention services in understanding the special needs of the child and enhancing the infant or toddler's development.

(p) *Free appropriate public education*. Special education and related services for children ages 3–21 years (inclusive) that:

(1) Are provided at no cost (except as provided in paragraph (vv)(1) of this section) to parents or child with a disability and are under the general

supervision and direction of a Section 6 School Arrangement.

(2) Are provided at an appropriate preschool, elementary, or secondary school.

(3) Are provided in conformity with an Individualized Education Program.

(4) Meet the requirements of this part.

(q) *Frequency and intensity*. The number of days or sessions that a service will be provided, the length of time that the service is provided during each session, whether the service is provided during each session, and whether the service is provided on an individual or group basis.

(r) *Health services*. Services necessary to enable an infant or toddler, to benefit from the other early intervention services under this part during the time that the infant or toddler is receiving the other early intervention services. The term includes:

(1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or osteotomy collection bags, and other health services.

(2) Consultation by physicians with other service providers on the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.

(3) The term does not include the following:

(i) Services that are surgical in nature or purely medical in nature.

(ii) Devices necessary to control or treat a medical condition.

(iii) Medical or health services that are routinely recommended for all infants or toddlers.

(s) *Hearing impairment*. A hearing loss, whether permanent or fluctuating, that adversely affects an infant's, toddler's, preschool child's, or child's educational performance.

(t) *High probability for developmental delay*. An infant or toddler with a medical condition that places him or her at substantial risk of evidencing a developmental delay before the age of 5 years without the benefit of early intervention services.

(u) *Include; such as*. Not all the possible items are covered, whether like or unlike the ones named.

(v) *Independent evaluation*. An evaluation conducted by a qualified examiner who is not employed by the DoD Section 6 Schools.

(w) *Individualized education program (IEP)*. A written statement for a preschool child or child with a disability (ages 3–21 years inclusive) developed and implemented in accordance with this part (Appendix B to this part).

(x) *Individualized family service plan (IFSP)*. A written statement for an infant or toddler with a disability and his or her family that is a multidisciplinary assessment of the unique needs of the infant or toddler and concerns and the priorities of the family, and an identification of the services appropriate to meet such needs, concerns, and priorities.

(y) *Individuals with disabilities*. Infants and toddlers with disabilities, preschool children with disabilities, and children with disabilities ages birth to 21 years (inclusive) who are either entitled to enroll in a Section 6 School Arrangement or would, but for their age, be so entitled.

(z) *Infants and toddlers with disabilities*. Individuals from birth to age 2 years (inclusive), who need early intervention services because they:

(1) Are experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures, of 25 percent (or 2 standard deviations below the mean), in one or more areas, or 20 percent (or 1½ standard deviations below the mean), in two or more of the following areas of development: cognitive, physical, communication, social or emotional, or adaptive development.

(2) Are at-risk for a developmental delay; i.e., have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; e.g., chromosomal disorders and genetic syndromes.

(aa) *Intercomponent*. Cooperation among the DoD Components and programs so that coordination and integration of services to individuals with disabilities and their families occur.

(bb) *Medically related services*. (1) Medical services (as defined in paragraph (bb) of this section) and those services provided under professional medical supervision that are required by a CSC either to determine a student's eligibility for special education or, if the student is eligible, the special education and related services required by the student under this part in accordance with 32 CFR part 345.

(2) Provision of either direct or indirect services listed on an IEP as necessary for the student to benefit from the educational curriculum. These services may include: Medical; social work; community health nursing; dietary; psychiatric diagnosis; evaluation, and follow up; occupational therapy; physical therapy; audiology; ophthalmology; and psychological testing and therapy.

(cc) *Medical services*. Those evaluative, diagnostic, therapeutic, and

supervisory services provided by a licensed and credentialed physician to assist CSCs and to implement IEPs. Medical services include diagnosis, evaluation, and medical supervision of related services that by statute, regulation, or professional tradition are the responsibility of a licensed and credentialed physician.

(dd) *Mental retardation*. Significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a preschool child's or child's educational performance.

(ee) *Multidisciplinary*. The involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities, and development of an IFSP or IEP.

(ff) *Native language*. When used with reference to an individual of limited English proficiency, the language normally used by such individuals, or in the case of an infant, toddler, preschool child or child, the language normally used by the parent of the infant, toddler, preschool child or child.

(gg) *Natural environments*. Settings that are natural or normal for the infant or toddler's same age peers who have no disability.

(hh) *Non-section 6 school arrangement or facility*. A public or private school or other institution not operated in accordance with 32 CFR part 345. This term includes section 6 special contractual arrangements.

(ii) *Nutrition services*. These services include:

(1) Conducting individual assessments in nutritional history and dietary intake; anthropometric, biochemical and clinical variables; feeding skills and feeding problems; and food habits and food preferences.

(2) Developing and monitoring appropriate plans to address the nutritional needs of infants and toddlers eligible for early intervention services.

(3) Making referrals to appropriate community resources to carry out nutrition goals.

(jj) *Orthopedic impairment*. A severe physical impairment that adversely affects a child's educational performance. The term includes congenital impairments (such as club foot and absence of some member), impairments caused by disease (such as poliomyelitis and bone tuberculosis), and impairments from other causes such as cerebral palsy, amputations, and fractures or burns causing contracture.

(kk) *Other health impairment*. Having an autistic condition that is manifested by severe communication and other developmental and educational problems; or having limited strength, vitality, or alertness due to chronic or acute health problems that adversely affect a child's educational performance as determined by the CSC, such as: ADD, heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, and diabetes.

(ll) *Parent*. The biological father or mother of a child; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, provided that such person stands in loco parentis to that child and contributes at least one-half of the child's support.

(mm) *Personally identifiable information*. Information that includes the name of the infant, toddler, preschool child, child, parent or other family member; the home address of the infant, toddler, preschool child, child, parent or other family member; another personal identifier, such as the infant's, toddler's, preschool child's, child's, parent's or other family member's social security number; or a list of personal characteristics or other information that would make it possible to identify the infant, toddler, preschool child, child, parent, or other family member with reasonable certainty.

(nn) *Preschool children with disabilities*. These are students, ages 3–5 years (inclusive), who need special education services because they:

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: Cognitive development, physical development, communication development, social or emotional development, and adaptive development; and

(2) Who, by reason thereof, need special education and related services.

(oo) *Primary referral source*. The DoD Components, including child care centers, pediatric clinics, and parents that suspect an infant, toddler, preschool child or child has a disability and bring that infant, toddler, preschool child or child to the attention of the Early Intervention Program or school CSC.

(pp) *Public awareness program*. Activities focusing on early identification of infants and toddlers with disabilities, including the

preparation and dissemination by the military medical department to all primary referral sources of information materials for parents on the availability of early intervention services. Also includes procedures for determining the extent to which primary referral sources within the Department of Defense, especially within DoD medical treatment facilities, and physicians disseminate information on the availability of early intervention services to parents of infants or toddlers with disabilities.

(qq) *Qualified.* With respect to instructional personnel, a person who holds at a minimum a current and applicable teaching certificate from any of the 50 States, Puerto Rico, or the District of Columbia, or has met other pertinent requirements in the areas in which he or she is providing special education or related services not of a medical nature to children with disabilities. Providers of early intervention services and medically related services must meet standards established by the ASD(HA).

(rr) *Related services.* This includes transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology; psychological services; physical and occupational therapy; recreation, including therapeutic recreation and social work services; and medical and counseling services), including rehabilitation counseling (except that such medical services shall be for diagnostic and evaluative purposes only)) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in preschool children or children. The following list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as clean intermittent catheterization), if they are required to assist a child with a disability to benefit from special education, as determined by a CSC.

(1) *Audiology.* This term includes:

(i) Audiological, diagnostic, and prescriptive services provided by audiologists who have a Certificate of Clinical Competence—Audiology (CCC-A) and pediatric experience. Audiology shall not include speech therapy.

(ii) Identification of children with hearing loss.

(iii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention designed to ameliorate or correct that loss.

(iv) Provision of ameliorative and corrective activities, including language

and auditory training, speech-reading (lip-reading), hearing evaluation, speech conservation, the recommendation of amplification devices, and other aural rehabilitation services.

(v) Counseling and guidance of children, parents, and service providers regarding hearing loss.

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) *Counseling services.* Services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel to help a preschool child or child with a disability to benefit from special education.

(3) *Early identification.* The implementation of a formal plan for identifying a disability as early as possible in the individual's life.

(4) *Medical services.* Those evaluative, diagnostic, therapeutic, and supervisory services provided by a licensed and credentialed physician to assist CSCs in determining whether a child has a medically related disability condition that results in the child's need for special education and related services and to implement IEPs. Medical services include diagnosis, evaluation, and medical supervision of related services that, by statute, regulation, or professional tradition, are the responsibility of a licensed and credentialed physician.

(5) *Occupational therapy.* Therapy that provides developmental evaluations and treatment programs using selected tasks to restore, reinforce, or enhance functional performance. It addresses the quality and level of functions in areas such as behavior, motor coordination, spatial orientation; visual motor and sensory integration; and general activities of daily living. This therapy, which is conducted by a qualified occupational therapist, provides training and guidance in using special equipment to improve the patient's functioning in skills of daily living, work, and study.

(6) *Parent counseling and training.* Assisting parents in understanding the special needs of their preschool child or children and providing parents with information about child development and special education.

(7) *Physical therapy.* Therapy that provides evaluations and treatment programs using exercise, modalities, and adaptive equipment to restore, reinforce, or enhance motor performance. It focuses on the quality of movement, reflex development, range of motion, muscle strength, gait, and gross

motor development, seeking to decrease abnormal movement and posture while facilitating normal movement and equilibrium reactions. The therapy, which is conducted by a qualified physical therapist, provides for measurement and training in the use of adaptive equipment and prosthetic and orthotic appliances. When best efforts to obtain a qualified physical therapist fail, therapy may be conducted by a qualified physical therapist assistant under the clinical supervision of a qualified physical therapist.

(8) *Psychological services.* Services listed in paragraphs (rr)(8)(i) through (rr)(8)(iv) of this section that are provided by a qualified psychologist:

(i) Administering psychological and educational tests and other assessment procedures.

(ii) Interpreting test and assessment results.

(iii) Obtaining, integrating, and interpreting information about a preschool child's or child's behavior and conditions relating to his or her learning.

(iv) Consulting with other staff members in planning school programs to meet the special needs of preschool children and children, as indicated by psychological tests, interviews, and behavioral evaluations.

(v) Planning and managing a program of psychological services, including psychological counseling for preschool children, children, and parents. For the purpose of these activities, a qualified psychologist is a clinical psychologist licensed in a State of the United States who has a degree in clinical psychology and additional pediatric training and/or experience.

(9) *Recreation.* This term includes:

(i) Assessment of leisure activities.

(ii) Therapeutic recreational activities.

(iii) Recreational programs in schools and community agencies.

(iv) Leisure education.

(10) *School health services.* Services provided, pursuant to an IEP, by qualified school health nurse, or other qualified person, that are required for a preschool child or child with a disability to benefit from special education.

(11) *Social work counseling services in schools.* This term includes:

(i) Preparing a social and developmental history on a preschool child or child identified as having a disability.

(ii) Counseling the preschool child or child with a disability and his or her family on a group or individual basis, pursuant to an IEP.

(iii) Working with problems in a preschool child's or child's living

situation (home, school, and community) that adversely affect his or her adjustment in school.

(iv) Using school and community resources to enable the preschool child or children to receive maximum benefit from his or her educational program.

(12) *Speech pathology*. This term includes the:

(i) Identification of preschool children and children with speech or language disorders.

(ii) Diagnosis and appraisal of specific speech or language disorders.

(iii) Referral for medical or other professional attention to correct or ameliorate speech or language disorders.

(iv) Provision of speech and language services for the correction, amelioration, and prevention of communicative disorders.

(v) Counseling and guidance of preschool children, children, parents, and teachers regarding speech and language disorders.

(13) *Transportation*. This term includes transporting the individual with a disability and, when necessary, an attendant or family member or reimbursing the cost of travel ((e.g., mileage, or travel by taxi, common carrier or other means) and related costs (e.g., tolls and parking expenses)) when such travel is necessary to enable a preschool child or child to receive special education (including related services) or an infant or toddler and the infant's or toddler's family to receive early intervention services.

Transportation services include:

(i) Travel to and from school and between schools, including travel necessary to permit participation in educational and recreational activities and related services.

(ii) Travel from school to a medically related service site and return.

(iii) Travel in and around school buildings.

(iv) Travel to and from early intervention services.

(v) Specialized equipment (including special or adapted buses, lifts, and ramps) if required to provide special transportation for an individual with a disability.

(vi) If necessary, attendants assigned to vehicles transporting an individual with a disability when that individual requires assistance to be safely transported.

(ss) *Section 6 school arrangement*. The schools (pre-kindergarten through grade 12) operated by the Department of Defense within the CONUS, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

Section 6 School Arrangements are operated under DoD Directive 1342.21.*

(tt) *Separate facility*. A school or a portion of a school, regardless of whether it is used by the Section 6 School Arrangement, that is only attended by children with disabilities.

(uu) *Serious emotional disturbance*. The term includes:

(1) A condition that has been confirmed by clinical evaluation and diagnosis and that, over a long period of time and to a marked degree, adversely affects educational performance and that exhibits one or more of the following characteristics:

(i) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(iii) Inappropriate types of behavior under normal circumstances.

(iv) A tendency to develop physical symptoms or fears associated with personal or school problems.

(v) A general, pervasive mood of unhappiness or depression.

(2) Schizophrenia, but does not include children who are socially maladjusted, unless it is determined that they are otherwise seriously emotionally disturbed.

(vv) *Service provider*. Any individual who provides services listed in an IEP or an IFSP.

(ww) *Social work services*. This term includes:

(1) Preparing a social or developmental history on an infant, toddler, preschool child or child with a disability.

(2) Counseling with the infant, toddler, preschool child or child and family in a group or individual capacity.

(3) Working with individuals with disabilities (0-21 inclusive) in the home, school, and/or community environment to ameliorate those conditions that adversely affect development or educational performance.

(4) Using school and community resources to enable the child to receive maximum benefit from his or her educational program or for the infant, toddler, and family to receive maximum benefit from early intervention services.

(xx) *Special education*. Specially designed instruction, at no cost to the parent, to meet the unique needs of a preschool child or child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, and instruction in

physical education. The term includes speech pathology or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a preschool child or child with a disability, and is considered "special education" rather than a "related service." The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(1) *At no cost*. With regard to a preschool child or child eligible to attend Section 6 School Arrangements, specially designed instruction and related services are provided without charge, but incidental fees that are normally charged to nondisabled students, or their parents, as a part of the regular educational program may be imposed.

(2) *Physical education*. The development of:

(i) Physical and motor fitness.

(ii) Fundamental motor skills and patterns.

(iii) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(iv) A program that includes special physical education, adapted physical education, movement education, and motor development.

(3) *Vocational education*. This term means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(yy) *Special instruction*. This term includes:

(1) Designing learning environments and activities that promote the infant's, toddler's, preschool child's or child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction.

(2) Planning curriculum, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the infant's, toddler's, preschool child's or child's IEP or IFSP.

(3) Providing families with information, skills, and support related to enhancing the skill development of the infant, toddler, or preschool child or child.

(4) Working with the infant, toddler, preschool child or child to enhance the infant's, toddler's, preschool child's or child's development and cognitive processes.

*See footnote 1 to § 80.1 (c).

(zz) *Specific learning disability.* A disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself as an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include preschool children or children who have learning problems that are primarily the result of visual, hearing, or motor disabilities, mental retardation, emotional disturbance, or environmental, cultural, or economic differences.

(aaa) *Speech and language impairments.* A communication disorder, such as stuttering, impaired articulation, voice impairment, or a disorder in the receptive or expressive areas of language that adversely affects a preschool child's or child's educational performance.

(bbb) *Superintendent.* The chief official of a Section 6 School Arrangement responsible for the implementation of this part on his or her installation.

(ccc) *Transition services.* A coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation.

(ddd) *Traumatic brain injury.* An injury to the brain caused by an external physical force or by an internal occurrence, such as stroke or aneurysm, resulting in total or partial functional disability or psychosocial maladjustment that adversely affects educational performance. The term includes open or closed head injuries resulting in mild, moderate, or severe impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory; perceptual and motor abilities;

psychosocial behavior; physical function; and information processing and speech. The term does not include brain injuries that are congenital or degenerative or brain injuries that are induced by birth trauma.

(eee) *Vision services.* Services necessary to ameliorate the effects of sensory impairment resulting from a loss of vision.

(fff) *Visual impairment.* A sensory impairment including blindness that, even with correction, adversely affects a preschool child or child's educational performance. The term includes both partially seeing and blind preschool children and children.

§ 80.4 Policy.

It is DoD policy that:

(a) All individuals with disabilities ages 3 to 21 years receiving or entitled to receive educational instruction from the Section 6 School Arrangements shall be provided a free, appropriate education under this part in accordance with the IDEA, Pub. L. 101-476, as amended; the IDEA Amendments of 1991, Pub. L. 102-119, section 23; and DoD Directive 1342.21.

(b) All individuals with disabilities ages birth through 2 years (inclusive) and their families are entitled to receive early intervention services under this part, provided that such infants and toddlers would be eligible to enroll in a Section 6 School Arrangement but for their age.

§ 80.5 Responsibilities.

(a) The Assistant Secretary of Defense for Personnel and Readiness shall:

(1) Ensure that all infants and toddlers with disabilities (birth through 2 years inclusive) who but for their age would be eligible to attend the Section 6 Arrangement Schools, and their families are provided early intervention services in accordance with Pub. L. 101-476, as amended, and in conformity with the procedures in appendix A to this part.

(2) Ensure that preschool children and children with disabilities ages 3-21 years (inclusive) receiving educational instruction from Section 6 School Arrangements are provided a free appropriate public education and that the educational needs of such preschool children and children with disabilities are met using the procedures established by this part.

(3) Ensure that educational facilities and services provided by Section 6 School Arrangements for preschool children and children with disabilities are comparable to educational facilities and services for non-disabled students.

(4) Maintain records on special education and related services provided

to children with disabilities, consistent with 32 CFR part 310.

(5) Ensure the provision of all necessary diagnostic services and special education and related services listed on an IEP (including those supplied by or under the supervision of physicians) to preschool children and children with disabilities who are enrolled in Section 6 School Arrangements.

In fulfilling this responsibility, the Assistant Secretary of Defense (Personnel and Readiness), (ASD(P&R)), or designee, may use intercomponent arrangements, or act through contracts with private parties, when funds are authorized and appropriated.

(6) Develop and implement a compressive system of personnel development, in accordance with 20 U.S.C. 1413(a)(3), for all professional staff employed by a Section 6 School Arrangement. This system shall include:

(a) Inservice training of general and special educational instructional and support personnel,

(b) Implementing innovative strategies and activities for the recruitment and retention of medically related service providers.

(c) Detailed procedures to assure that all personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, and

(d) Effective procedures for acquiring and disseminating to teachers and administrators of programs for children with disabilities significant information derived from educational research, demonstration, and similar projects, and

(e) Adopting, where appropriate, promising practices, materials, and technology.

(7) Provide technical assistance to professionals in Section 6 School Arrangements involved in, or responsible for, the education of preschool children or children with disabilities.

(8) Ensure that child-find activities are coordinated with other relevant components and are conducted to locate and identify every individual with disabilities.

(9) Issue guidance implementing this part.

(10) Undertake evaluation activities to ensure compliance with this part through monitoring, technical assistance, and program evaluation.

(11) Chair the DOD Coordinating Committee on Domestic Early Intervention, Special Education, and Related Services, which shall be composed of representatives of the Secretaries of the Military Departments, the Assistant Secretary of Defense for

Health Affairs (ASD(HA)), the General Counsel of the Department of Defense (GC, DOD), and the Director, Section 6 Schools.

(12) Through the DOD Coordinating Committee on Domestic Early Intervention, Special Education, and Related Services, monitor the provision of special education and related services and early intervention services furnished under this part, and ensure that related services, special education, and early intervention services are properly coordinated.

(13) Ensure that appropriate personnel are trained to provide mediation services in cases that otherwise might result in due process proceedings under this part.

(14) Ensure that transition services from early intervention services to regular or special education and from special education to the world of work are provided.

(15) Ensure that all DOD programs that provide services to infants and toddlers and their families (e.g., child care, medical care, recreation) are involved in a comprehensive intercomponent system for early intervention services.

(16) Ensure, whenever practicable, that planned construction not yet past the 35 percent design phase and new design begun after the date of this part or renovation of school or child care facilities includes consideration of the space required for the provision of medically related services and early intervention services.

(17) The Domestic Advisory Panel shall:

(i) Consist of members appointed by the ASD(P&R) or Principal Deputy ASD(P&R). Membership shall include at least one representative from each of the following groups:

(A) Individuals with disabilities.
(B) Parents, including minority parents of individuals with disabilities from various age groups.

(C) Section 6 School Arrangements special education teachers.

(D) Section 6 School Arrangements regular education teachers.

(E) Section 6 School Arrangements Superintendent office personnel.

(F) The Office of Director, Section 6 Schools.

(G) The Surgeons General of the Military Departments.

(H) The Family Support Programs of the Military Departments.

(I) Section 6 School Arrangements School Boards.

(J) Early Intervention service providers on installations with Section 6 School Arrangements.

(K) Other appropriate personnel.

(ii) Meet as often as necessary.

(iii) Perform the following duties:

(A) Review information and provide advice to ASD(P&R) regarding improvements in services provided to individuals with disabilities in Section 6 Schools and early intervention programs.

(B) Receive and consider the views of various parent, student, and professional groups, and individuals with disabilities.

(C) When necessary, establish committees for short-term purposes composed of representatives from parent, student, family and other professional groups, and individuals with disabilities.

(D) Review the findings of fact and decision of each impartial due process hearing conducted pursuant to this part.

(E) Assist in developing and reporting such information and evaluations as may aid Section 6 Schools and the Military Departments in the performance of duties under this part.

(F) Make recommendations, based on program and operational information, for changes in the budget, organization, and general management of the special education program, and in policy and procedure.

(G) Comment publicly on rules or standards regarding the education of individuals with disabilities.

(H) Assist in developing recommendations regarding the transition of toddlers with disabilities to preschool services.

(b) The Assistant Secretary of Defense for Health Affairs in consultation with the ASD(P&R), the GC, DoD, and the Secretaries of the Military Departments, shall:

(1) Establish staffing and personnel standards for personnel who provide early intervention services and medically related services.

(2) Develop and implement a comprehensive system of personnel development in accordance with 20 U.S.C. 1413-(a)(3), including the training of professionals, paraprofessionals and primary referral sources, regarding the basic components of early intervention services and medically related services. Such a system may include:

(i) Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers.

(ii) Ensuring that early intervention service providers and medically related service providers are fully and appropriately qualified to provide early intervention services and medically related services, respectively.

(iii) Training personnel to work in the military environment.

(iv) Training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program to a preschool program.

(3) Develop and implement a system for compiling data on the numbers of infants and toddlers with disabilities and their families in need of appropriate early intervention services, the numbers of such infants and toddlers and their families served, the types of services, and other information required to evaluate the implementation of early intervention programs.

(4) Resolve disputes among the DoD Components arising under appendix A to this part.

(c) The *Secretaries of the Military Departments* shall:

(1) Provide quality assurance for medically related services in accordance with personnel standards and staffing standards under DoD Directive 6025.13⁵ developed by the Assistant Secretary of Defense for Health Affairs (ASD(HA)).

(2) Plan, develop, and implement a comprehensive, coordinated, intercomponent, community-based system of early intervention services for infants and toddlers with disabilities (birth through 2 inclusive) and their families who are living on an installation with a Section 6 School Arrangement, using the procedures established by this part and guidelines from the ASD(HA) on staffing and personnel standards.

(3) Undertake activities to ensure compliance with this part through technical assistance, program evaluation, and monitoring.

(d) The *Director, Directorate for Industrial Security Clearance Review (DISCR)* shall ensure the provision of impartial due process hearings under appendix C to this part.

§ 80.6 Procedures.

(a) Procedures for the provision of early intervention services for infants and toddlers with disabilities and their families are in appendix A to this part. Provision of early intervention services includes establishing a system of coordinated, comprehensive, multidisciplinary, intercomponent services providing appropriate early intervention services to all eligible infants and toddlers with disabilities and their families.

(b) Procedures for special educational programs (including related services) for preschool children and children with

⁵ See footnote 1 to § 80.1 (c).

disabilities (3–21 years inclusive) are in appendix B to this part.

(c) Procedures for adjudicative requirements required by Pub. L. 101–476, as amended, and Pub. L. 102–119 are in appendix C to this part. These procedures establish adjudicative requirements whereby the parents of an infant, toddler, preschool child or child with a disability and the military department concerned or Section 6 School System are afforded an impartial due process hearing on early intervention services or on the identification, evaluation, and educational placement of, and the free appropriate public education provided to, such infant, toddler, preschool child or child, as the case may be.

Appendix A to Part 80—Procedures for the Provision of Early

Intervention Services for Infants And Toddlers With Disabilities, Ages 0–2 Years (Inclusive), and Their Families

A. Requirements for a System of Early Intervention Services

1. A system of coordinated, comprehensive, multidisciplinary, and interagency programs providing appropriate early intervention services to all infants and toddlers with disabilities and their families shall include the following minimum components:

a. A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant and toddler with a disability and the priorities and concerns of the infant's or toddler's family to assist in the development of the infant or toddler with a disability.

b. A mechanism to develop, for each infant and toddler with a disability, an IFSP and early intervention services coordination, in accordance with such service plan.

c. A comprehensive child-find system, coordinated with the appropriate Section 6 School Arrangement, including a system for making referrals to service providers that includes timeliness and provides for participation by primary referral sources, such as the CDC and the pediatric clinic.

d. A public awareness program including information on early identification of infants and toddlers with disabilities and the availability of resources in the community to address and remediate these disabilities.

e. A central directory that includes a description of the early intervention services and other relevant resources available in the community.

B. Each Military Medical Department Shall Develop and Implement a System To Provide for:

1. The administration and supervision of early intervention programs and services, including the identification and coordination of all available resources.

2. The development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families in a timely manner.

3. The execution of agreements with other DoD components necessary for the implementation of this appendix. Such agreements must be coordinated with the ASD(HA) and the GC, DoD, in consultation with the ASD(P&R).

4. The collection and reporting of data required by ASD(HA).

5. A multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs.

6. A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of its infant or toddler with a disability.

C. Each Military Medical Department Shall Develop and Implement a Program To Ensure That an IFSP is Developed for Each Infant or Toddler With a Disability and the Infant's or Toddler's Family According to the Following Procedures:

1. The IFSP shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate), based on the needs of the infant or toddler and family.

2. Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants:

a. The parent or parents of the infant or toddler.

b. Other family members, as requested by a parent, if feasible to do so.

c. An advocate, if his or her participation is requested by a parent.

d. The Early Intervention Program Services Coordinator who has been working with the family since the initial referral of the infant or toddler or who has been designated as responsible for the implementation of the IFSP.

e. A person or persons directly involved in conducting the evaluation and assessments.

f. Persons who will be providing services to the infant, toddler, or family, as appropriate.

3. The IFSP shall be developed within a reasonable time after the assessment. With the parent's consent, early intervention services may start before the completion of such an assessment under an IFSP.

4. The IFSP shall be in writing and contain:

a. A statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on acceptable objective criteria.

b. A statement of the family's resources, priorities, and concerns for enhancing the development of the family's infant or toddler with a disability.

c. A statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary.

d. A statement of the specific early intervention services necessary to meet the

unique needs of the infant or toddler and the family, including the frequency, intensity, and the method of delivering services.

e. A statement of the natural environments in which early intervention services shall be provided.

f. The projected dates for initiation of services and the anticipated duration of such services.

g. The name of the Early Intervention Program Service Coordinator.

h. The steps to be taken supporting the transition of the toddler with a disability to preschool services or other services to the extent such services are considered appropriate.

5. The contents of the IFSP shall be fully explained to the parents by the Early Intervention Program Service Coordinator, and informed written consent from such parents shall be obtained before the provision of early intervention services described in such plan. If the parents do not provide such consent with respect to a particular early intervention service, then the early intervention services to which such consent is obtained shall be provided.

D. Procedural Safeguards for the Early Intervention Program

1. The procedural safeguards include:

a. The timely administrative resolution of complaints by the parent(s), including hearing procedures (appendix C to this part).

b. The right to protection of personally identifiable information under 32 CFR part 310.

c. The right of the parent(s) to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service without jeopardizing the delivery of other early intervention services to which such consent is obtained.

d. The opportunity for the parent(s) to examine records on assessment, screening, eligibility determinations, and the development and implementation of the IFSP.

e. Written prior notice to the parent(s) of the infant or toddler with a disability whenever the Military Department concerned proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or the provision of appropriate early intervention services to the infant and toddler with a disability.

f. Procedures designed to ensure that the notice required in paragraph D.I.e. of this appendix fully informs the parents in the parents' native language, unless it clearly is not feasible to do so.

g. During the pendency of any proceeding under appendix C to this part 80, unless the Military Department concerned and the parent(s) otherwise agree, the infant or toddler shall continue to receive the early intervention services currently being provided, or, if applying for initial services, shall receive the services not in dispute.

Appendix B to Part 80—Procedures for Special Educational Programs (Including Related Services) for Preschool Children and Children With Disabilities (3–21 Years Inclusive)

A. Identification and Screening

1. Each Section 6 School Arrangement shall locate, identify, and, with the consent of a parent of each preschool child or children, evaluate all preschool school children or children who are receiving or are entitled to receive an education from Section 6 School Arrangements and who may need special education and/or related services.

2. Each Section 6 School Arrangement shall:

a. Provide screening, through the review of incoming records and the use of basic skills tests in reading, language arts, and mathematics, to determine whether a preschool child or child may be in need of special education and related services.

b. Analyze school health data for those preschool children and children who demonstrate possible disabling conditions. Such data shall include:

(1) Results of formal hearing, vision, speech, and language tests.

(2) Reports from medical practitioners.

(3) Reports from other appropriate professional health personnel as may be necessary, under this part, to aid in identifying possible disabling conditions.

c. Analyze other pertinent information, including suspensions, exclusions, other disciplinary actions, and withdrawals, compiled and maintained by Section 6 School Arrangements that may aid in identifying possible disabling conditions.

3. Each Section 6 School Arrangement, in cooperation with cognizant authorities at the installation on which the Section 6 School Arrangement is located, shall conduct ongoing child-find activities that are designed to identify all infants, toddlers, preschool children, and children with possible disabling conditions who reside on the installation or who otherwise either are entitled, or will be entitled, to receive services under this part.

a. If an element of the Section 6 School Arrangement, a qualified professional authorized to provide related services, a parent, or other individual believes that an infant, toddler, preschool child or child has a possible disabling condition, that individual shall be referred to the appropriate CSC or early intervention coordinator.

b. A Section 6 School Arrangement CSC shall work in cooperation with the Military Departments in identifying infants, toddlers, preschool children and children with disabilities (birth to 21 years inclusive).

B. Evaluation Procedures

1. Each CSC will provide a full and comprehensive diagnostic evaluation of special educational, and related service needs to any preschool child or child who is receiving, or entitled to receive, educational instruction from a Section 6 School Arrangement, operated by the Department of Defense under Directive 1342.21, and who is referred to a CSC for a possible disability.

The evaluation will be conducted before any action is taken on the development of the IEP or placement in a special education program.

2. Assessment materials, evaluation procedures, and tests shall be:

a. Racially and culturally nondiscriminatory.

b. Administered in the native language or mode of communication of the preschool child or child, unless it clearly is not feasible to do so.

c. Validated for the specific purpose for which they are used or intended to be used.

d. Administered by qualified personnel, such as a special educator, school psychologist, speech therapist, or a reading specialist, in conformity with the instructions provided by the producers of the testing device.

e. Administered in a manner so that no single procedure is the sole criterion for determining eligibility and an appropriate educational program for a disabled preschool child or child.

f. Selected to assess specific areas of educational strengths and needs, not merely to provide a single general intelligence quotient.

3. The evaluation shall be conducted by a multidisciplinary team and shall include a teacher or other specialist with knowledge in the areas of the suspected disability.

4. The preschool child or child shall be evaluated in all areas related to the suspected disability. When necessary, the evaluation shall include:

a. The current level of academic functioning, to include general intelligence.

b. Visual and auditory acuity.

c. Social and emotional status, to include social functioning within the educational environment and within the family.

d. Current physical status, including perceptual and motor abilities.

e. Vocational transitional assessment (for children ages 14–21 years (inclusive)).

5. The appropriate CSC shall meet as soon as possible after the preschool child's or child's formal evaluation to determine whether he or she is in need of special education and related services. The preschool child's or child's parents shall be invited to the meeting and afforded the opportunity to participate in such a meeting.

6. The school CSC shall issue a written report that contains:

a. A review of the formal and informal diagnostic evaluation findings of the multidisciplinary team.

b. A summary of information from the parents, the preschool child or child, or other persons having significant previous contact with the preschool child or child.

c. A description of the preschool child's or child's current academic progress, including a statement of his or her learning style.

d. A description of the nature and severity of the preschool child's or child's disability(ies).

7. A preschool child or child with a disability shall receive an individual comprehensive diagnostic evaluation every 3 years, or more frequently if conditions warrant, or if the preschool child's or child's parent, teacher, or related service provider requests an evaluation. The scope and nature

of the reevaluation shall be determined individually, based upon the preschool child's or child's performance, behavior, and needs when the reevaluation is conducted, and be used to update or revise the IEP.

C. Individualized Education Program (IEP)

1. Section 6 School Arrangements shall ensure that an IEP is developed and implemented for each preschool child or child with a disability enrolled in a Section 6 School Arrangement or placed on another institution by a Section 6 School Arrangement CSC under this part.

2. Each IEP shall include:

a. A statement of the preschool child's or child's present levels of educational performance.

b. A statement of annual goals, including short-term instructional objectives.

c. A statement of the specific special educational services and related services to be provided to the preschool child or child (including the frequency, number of times per week/month and intensity, amount of times each day) and the extent to which the preschool child or child may be able to participate in regular educational programs.

d. The projected anticipated date for the initiation and the anticipated length of such activities and services.

e. Appropriate objective criteria and evaluation procedures and schedules for determining, on an annual basis, whether educational goals and objectives are being achieved.

f. A statement of the needed transition services for the child beginning no later than age 16 and annually thereafter (and when determined appropriate for the child, beginning at age 14 or younger) including, when appropriate, a statement of DoD Component responsibilities before the child leaves the school setting.

3. Each preschool child or child with a disability shall be provided the opportunity to participate, with adaptations when appropriate, in the regular physical education program available to students without disabilities unless:

a. The preschool child or child with a disability is enrolled full-time in a separate facility; or

b. The preschool child or child with a disability needs specially designed physical education, as prescribed in his or her IEP.

4. If specially designed physical education services are prescribed in the IEP of a preschool child or child with a disability, the Section 6 School Arrangement shall provide such education directly, or shall make arrangements for the services to be provided through a non-Section 6 School Arrangement or another facility.

5. Section 6 School Arrangements shall ensure that a preschool child or child with a disability, enrolled by a CSC in a separate facility, receives appropriate, physical education in compliance with this part.

6. The IEP for each preschool child or child with a disability shall be developed and reviewed at least annually in meetings that include the following participants:

a. The designated representative of the Section 6 School Arrangement, who is qualified to supervise the provision of special

education. Such representative may not be the preschool child's or child's special education teacher.

b. One, or more, of the preschool child's or child's regular teachers, if appropriate.

c. The preschool child's or child's special education teacher or teachers.

d. One, or both, of the preschool child's or child's parents.

e. The child, if appropriate.

f. For a preschool child or child with a disability who has been evaluated, a member of the evaluation team or another person knowledgeable about the evaluation procedures used with that student and familiar with the results of the evaluation.

g. Other individuals, at the reasonable discretion of the parent(s) or the school.

7. Section 6 School Arrangements shall:

a. Ensure that an IEP meeting is held, normally within 19 working days, following a determination by the appropriate CSC that the preschool child or child is eligible to receive special education and/or related services.

b. Address the needs of a preschool child or child with a current IEP who transfers from a school operated by the DoD in accordance with 32 CFR part 347¹ or from a Section 6 School Arrangement to a Section 6 School Arrangement, by:

(1) Implementing the current IEP; or

(2) Revising the current IEP with the consent of a parent; or

(3) Initiating, with the consent of a parent, an evaluation of the preschool child or child, while continuing to provide appropriate services through a current IEP; or

(4) Initiating, with the consent of the parent, an evaluation of the preschool child or child without the provision of the services in the current IEP; or

(5) Initiating mediation, and if necessary, due process procedures.

c. Afford the preschool child's or child's parent(s) the opportunity to participate in every IEP or CSC meeting about their preschool child or child by:

(1) Providing the parent(s) adequate written notice of the purpose, time, and place of the meeting.

(2) Attempting to schedule the meeting at a mutually agreeable time and place.

8. If neither parent can attend the meeting, other methods to promote participation by a parent, such as telephone conversations and letters, shall be used.

9. A meeting may be conducted without a parent in attendance if the Section 6 School Arrangement is unable to secure the attendance of the parent. In this case, the Section 6 School Arrangement must have written records of its attempts to arrange a mutually acceptable time and place.

10. If the parent(s) attends the IEP meeting, the Section 6 School Arrangement shall take necessary action to ensure that at least one of the parents understands the proceedings at the meeting, including providing an interpreter for a parent who is deaf or whose native language is other than English.

11. The Section 6 School Arrangement shall give a parent a copy of the preschool child's or child's IEP.

12. Section 6 School Arrangements shall provide special education and related services, in accordance with an IEP, provided that the Department of Defense, its constituent elements, and its personnel, are not accountable if a preschool child or child does not achieve the growth projected in the IEP.

13. Section 6 School Arrangements shall ensure that an IEP is developed and implemented for each preschool child or child with a disability whom the CSC places in a non-Section 6 School or other facility.

D. Placement Procedures and Least Restrictive Environment

1. The placement of a preschool child or child in any special education program by the Section 6 School Arrangement shall be made only under an IEP and after a determination has been made that such student has a disability and needs special education and/or related services.

2. The Section 6 School Arrangement CSC shall identify the special education and related services to be provided under the IEP.

3. A placement decision may not be implemented without the consent of a parent of the preschool child or child, except as otherwise provided in accordance with this part.

4. The placement decision must be designed to educate a preschool child or child with a disability in the least restrictive environment so that such student is educated to the maximum extent appropriate with students who do not have disabilities. Special classes, separate schooling, or other removal of preschool children or children with disabilities from the regular educational environment shall occur only when the nature or severity of the disability is such that the preschool child or child with disabilities cannot be educated satisfactorily in the regular classes with the use of supplementary aids and services, including related services.

5. Each educational placement for a preschool child or child with a disability shall be:

a. Determined at least annually by the appropriate CSC.

b. Based on the preschool child or child's IEP.

c. Located as close as possible to the residence of the parent who is sponsoring the preschool child or child for attendance in a Section 6 School Arrangement.

d. Designed to assign the preschool child or child to the school such student would attend if he or she were not a student with a disability, unless the IEP requires some other arrangement.

e. Predicated on the consideration of all factors affecting the preschool child's or child's well-being, including the effects of separation from parent(s).

f. To the maximum extent appropriate, designed so that the preschool child or child participates in school activities, including meals and recess periods, with students who do not have a disability.

E. Children With Disabilities Placed in Non-Section 6 School Arrangements

1. Before a Section 6 School Arrangement CSC, with the concurrence of the Section 6 School Arrangement Superintendent concerned, places a preschool child or child with a disability in a non-Section 6 School or facility, the Section 6 School CSC shall conduct a meeting in accordance with this part to initiate the development of an IEP for such student.

2. Preschool children and children with disabilities eligible to receive instruction in Section 6 School Arrangements who are referred to another school or facility by the Section 6 School CSC have all the rights of students with disabilities who are attending the Section 6 School Arrangement.

a. If a Section 6 School Arrangement CSC places a preschool child or child with a disability in a non-Section 6 School Arrangement or facility as a means of providing special education and related services, the program of that facility, including nonmedical care, room, and board, as set forth in the student's IEP, must be at no cost to the student or the student's parents.

b. A Section 6 School Arrangement CSC may place a preschool child or child with a disability in a non-Section 6 School Arrangement or facility only if required by an IEP. An IEP for a student placed in a non-Section 6 school is not valid until signed by the Section 6 School Arrangement Superintendent, or designee, who must have participated in the IEP meeting. The IEP shall include determinations that:

(1) The Section 6 School Arrangement does not currently have, and cannot reasonably create, an educational program appropriate to meet the needs of the student with a disability.

(2) The non-Section 6 School Arrangement or facility and its educational program conform to this part.

3. A Section 6 School Arrangement is not responsible for the cost of a non-Section 6 School Arrangement placement when placement is made unilaterally, without the approval of the cognizant CSC and the superintendent, unless it is directed by a hearing officer under appendix C of this part or a court of competent jurisdiction.

F. Procedural Safeguards

1. Parents shall be given written notice before the Section 6 School Arrangement CSC proposes to initiate or change, or refuses to initiate or change, either the identification, evaluation, or educational placement of a preschool child or child receiving, or entitled to receive, special education and related services from a Section 6 School Arrangement, or the provision of a free appropriate public education by the Section 6 School Arrangement to the child. The notice shall fully inform a parent of the procedural rights conferred by this part and shall be given in the parent's native language, unless it clearly is not feasible to do so.

2. The consent of a parent of a preschool child or child with a disability or suspected of having a disability shall be obtained before any:

a. Initiation of formal evaluation procedures;

¹ Copies of DoD Directive 1342.6 may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

b. Initial special educational placement; or
c. Change in educational placement.

3. If a parent refuses consent to any formal evaluation or initial placement in a special education program, the Section 6 School Arrangement Superintendent may initiate an impartial due process hearing, as provided in appendix C of this part to show why an evaluation or placement in a special education program should occur without such consent. If the hearing officer sustains the Section 6 School Arrangement CSC position in the impartial due process hearing, the appropriate CSC may evaluate or provide special education and related services to the preschool child or child without the consent of a parent, subject to the parent's due process rights.

4. A parent is entitled to an independent evaluation of his or her preschool child or child at the Section 6 School Arrangement's expense, if the parent disagrees with the findings of an evaluation of the student conducted by the school and the parent successfully challenges the evaluation in an impartial due process hearing.

a. If an independent evaluation is provided at the expense of a Section 6 School Arrangement, it must meet the following criteria:

(1) Conform to the requirements of this part.

(2) Be conducted, when possible, within the area where the preschool child or child resides.

(3) Meet applicable DoD standards governing persons qualified to conduct an evaluation.

b. If the final decision rendered in an impartial due process hearing sustains the evaluation of the Section 6 School Arrangement CSC, the parent has the right to an independent evaluation, but not at the expense of the Department of Defense or any DoD Component.

5. The parents of a preschool child or child with a disability shall be afforded an opportunity to inspect and review all relevant educational records concerning the identification, evaluation, and educational placement of such student, and the provision of a free appropriate public education to him or her.

6. Upon complaint presented in a written petition, the parent of a preschool child or child with a disability or the Section 6 School System shall have the opportunity for an impartial due process hearing provided by the Department of Defense as prescribed by appendix C of this part.

7. During the pendency of any impartial due process hearing or judicial proceeding on the identification, evaluation, or educational placement of a preschool child or child with a disability receiving an education from a Section 6 School Arrangement or the provision of a free appropriate public education to such a student, unless the Section 6 School Arrangement and a parent of the student agree otherwise, the student shall remain in his or her present educational placement, subject to the disciplinary procedures prescribed in this part.

8. If a preschool child or child with a disability, without a current IEP, who is entitled to receive educational instruction

from a Section 6 School Arrangement is applying for initial admission to a Section 6 School Arrangement, that student shall enter that Arrangement on the same basis as a student without a disability.

9. The parent of a preschool child or child with a disability or a Section 6 School Arrangement employee may file a written communication with the Section 6 School Arrangement Superintendent about possible general violations of this part or Pub. L. 101-476, as amended. Such communications will not be treated as complaints under appendix C of this part.

G. Disciplinary Procedures

1. All regular disciplinary rules and procedures applicable to students receiving educational instruction in the Section 6 School Arrangements shall apply to preschool children and children with disabilities who violate school rules and regulations or disrupt regular classroom activities, subject to the provisions of this section.

2. The appropriate CSC shall determine whether the conduct of a preschool child or child with a disability is the result of that disability before the long-term suspension (10 consecutive or cumulative days during the school year) or the expulsion of that student.

3. If the CSC determines that the conduct of such a preschool child or child with a disability results in whole or part from his or her disability, that student may not be subject to any regular disciplinary rules and procedures; and

a. The student's parent shall be notified in accordance with this part of the right to have an IEP meeting before any change in the student's special education placement. (A termination of the student's education for more than 10 days, either cumulative or consecutive, constitutes a change of placement.)

b. The Section 6 School Arrangement CSC or another authorized school official shall ensure that an IEP meeting is held to determine the appropriate educational placement for the student in consideration of his or her conduct before the tenth cumulative day of the student's suspension or an expulsion.

4. A preschool child or child with a disability shall neither be suspended for more than 10 days nor expelled, and his or her educational placement shall not otherwise be changed for disciplinary reasons, unless in accordance with this section, except that:

a. This section shall be applicable only to preschool children and children determined to have a disability under this part.

b. Nothing contained herein shall prevent the emergency suspension of any preschool child or child with a disability who endangers or reasonably appears to endanger the health, welfare, or safety of himself or herself, or any other student, teacher, or school personnel, provided that:

(1) The appropriate Section 6 School Arrangement CSC shall immediately meet to determine whether the preschool child's or child's conduct results from his or her disability and what change in special

education placement is appropriate for that student.

(2) The child's parent(s) shall be notified immediately of the student's suspension and of the time, purpose, and location of the CSC meeting and their right to attend the meeting.

(3) A component is included in the IEP that addresses the behavioral needs of the student.

(4) The suspension of the student is only effective for the duration of the emergency.

Appendix C to Part 80—Hearing Procedures

A. Purpose

This appendix establishes adjudicative requirements whereby the parents of infants, toddlers, preschool children, and children who are covered by this part and, as the case may be, the cognizant Military Department or Section 6 School System are afforded impartial due process hearings and administrative appeals on the early intervention services or identification, evaluation, and educational placement of, and the free appropriate public education provided to, such children by the Department of Defense, in accordance with Pub. L. 101-476, as amended, 20 U.S.C. 1401 *et seq.*; Pub. L. 81-874, sec. 6, as amended, 20 U.S.C. 241; Pub. L. 97-35, sec. 505(c), 20 U.S.C. 241 note; and Pub. L. 102-119, sec. 23, 20 U.S.C. 241(a).

B. Administration

1. The Directorate for Industrial Security Clearance Review (DISCR) shall have administrative responsibility for the proceedings authorized by this appendix.

2. This appendix shall be administered to ensure that the findings, judgments, and determinations made are prompt, fair, and impartial.

3. Impartial hearing officers, who shall be DISCR Administrative Judges, shall be appointed by the Director, DISCR, and shall be attorneys who are independent of the Section 6 School System or the Military Department concerned in proceedings conducted under this appendix. A parent shall have the right to be represented in such proceedings, at no cost to the government, by counsel and by persons with special knowledge or training with respect to the problems of individuals with disabilities. DISCR Department Counsel normally shall appear and represent the Section 6 School System in proceedings conducted under this appendix, when such proceedings involve a preschool child or child. When an infant or toddler is involved, the Military Department responsible under this part for delivering early intervention services shall either provide its own counsel or request counsel from DISCR.

C. Mediation

1. Mediation can be initiated by either a parent or, as appropriate, the Military Department concerned or the Section 6 School System to resolve informally a disagreement on the early intervention services for an infant or toddler or the identification, evaluation, educational placement of, or the free appropriate public education provided to, a preschool child or child. The cognizant Military Department,

rather than the Section 6 School System, shall participate in mediation involving early intervention services. Mediation shall consist of, but not be limited to, an informal discussion of the differences between the parties in an effort to resolve those differences. The parents and the appropriate school or Military Department officials may attend mediation sessions.

2. Mediation must be conducted, attempted, or refused in writing by a parent of the infant, toddler, preschool child or child whose early intervention or special education services (including related services) are at issue before a request for, or initiation of, a hearing authorized by this appendix. Any request by the Section 6 School System or Military Department for a hearing under this appendix shall state how this requirement has been satisfied. No stigma may be attached to the refusal of a parent to mediate or to an unsuccessful attempt to mediate.

D. Practice and Procedure

1. Hearing

a. Should mediation be refused or otherwise fail to resolve the issues on the provision of early intervention services or a free, appropriate public education to a disabled infant, toddler, preschool child or child or the identification, evaluation, or educational placement of such an individual, the parent or either the school principal, on behalf of the Section 6 School System, or the military medical treatment facility commander, on behalf of the Military Department having jurisdiction over the infant or toddler, may request and shall receive a hearing before a hearing officer to resolve the matter. The parents of an infant, toddler, preschool child or child and the Section 6 School System or Military Department concerned shall be the only parties to a hearing conducted under this Appendix.

b. The party seeking the hearing shall submit a written request, in the form of a petition, setting forth the facts, issues, and proposed relief, to the Director, DISCR. The petitioner shall deliver a copy of the petition to the opposing party (that is, the parent or the school principal, on behalf of the Section 6 School System, or the military medical treatment facility commander, on behalf of the Military Department), either in person or by first-class mail, postage prepaid. Delivery is complete upon mailing. When the Section 6 School System or Military Department petitions for a hearing, it shall inform the other parties of the deadline for filing an answer under paragraph D.1.c. of this appendix, and shall provide the other parties with a copy of this part.

c. An opposing party shall submit an answer to the petition to the Director, DISCR, with a copy to the petitioner, within 15 calendar days of receipt of the petition. The answer shall be as full and complete as possible, addressing the issues, facts, and proposed relief. The submission of the answer is complete upon mailing.

d. Within 10 calendar days after receiving the petition, the Director, DISCR, shall assign a hearing officer, who then shall have jurisdiction over the resulting proceedings.

The Director, DISCR, shall forward all pleadings to the hearing officer.

e. The questions for adjudication shall be based on the petition and the answer, provided that a party may amend a pleading if the amendment is filed with the hearing officer and is received by the other parties at least 5 calendar days before the hearing.

f. The Director, DISCR, shall arrange for the time and place of the hearing, and shall provide administrative support. Such arrangements shall be reasonably convenient to the parties.

g. The purpose of a hearing is to establish the relevant facts necessary for the hearing officer to reach a fair and impartial determination of the case. Oral and documentary evidence that is relevant and material may be received. The technical rules of evidence shall be relaxed to permit the development of a full evidentiary record, with the Federal Rules of Evidence (28 U.S.C.) serving as a guide.

h. The hearing officer shall be the presiding officer, with judicial powers to manage the proceeding and conduct the hearing. Those powers shall include the authority to order an independent evaluation of the child at the expense of the Section 6 School System or Military Department concerned and to call and question witnesses.

i. Those normally authorized to attend a hearing shall be the parents of the individual with disabilities, the counsel and personal representative of the parents, the counsel and professional employees of the Section 6 School System or Military Department concerned, the hearing officer, and a person qualified to transcribe or record the proceedings. The hearing officer may permit other persons to attend the hearing, consistent with the privacy interests of the parents and the individual with disabilities, provided the parents have the right to an open hearing upon waiving in writing their privacy rights and those of the individual with disabilities.

j. A verbatim transcription of the hearing shall be made in written or electronic form and shall become a permanent part of the record. A copy of the written transcript or electronic record of the hearing shall be made available to a parent upon request and without cost. The hearing officer may allow corrections to the written transcript or electronic recording for the purpose of conforming it to actual testimony after adequate notice of such changes is given to all parties.

k. The hearing officer's decision of the case shall be based on the record, which shall include the petition, the answer, the written transcript or the electronic recording of the hearing, exhibits admitted into evidence, pleadings or correspondence properly filed and served on all parties, and such other matters as the hearing officer may include in the record, provided that such matter is made available to all parties before the record is closed under paragraph D.1.m. of this appendix.

l. The hearing officer shall make a full and complete record of a case presented for adjudication.

m. The hearing officer shall decide when the record in a case is closed.

n. The hearing officer shall issue findings of fact and render a decision in a case not later than 50 calendar days after being assigned to the case, unless a discovery request under section D.2. of this appendix is pending.

2. Discovery

a. Full and complete discovery shall be available to parties to the proceeding, with the Federal Rules of Civil Procedure (28 U.S.C.) serving as a guide.

b. If voluntary discovery cannot be accomplished, a party seeking discovery may file a motion to accomplish discovery, provided such motion is founded on the relevance and materiality of the proposed discovery to the issues. An order granting discovery shall be enforceable as is an order compelling testimony or the production of evidence.

c. A copy of the written or electronic transcription of a deposition taken by the Section 6 School System or Military Department concerned shall be made available free of charge to a parent.

3. Witnesses; Production of Evidence

a. All witnesses testifying at the hearing shall be advised that it is a criminal offense knowingly and willfully to make a false statement or representation to a Department or Agency of the United States Government as to any matter within the jurisdiction of that Department or Agency. All witnesses shall be subject to cross-examination by the parties.

b. A party calling a witness shall bear the witness' travel and incidental expenses associated with testifying at the hearing. The Section 6 School System or Military Department concerned shall pay such expenses when a witness is called by the hearing officer.

c. The hearing officer may issue an order compelling the attendance of witnesses or the production of evidence upon the hearing officer's own motion or, if good cause be shown, upon motion of a party.

d. When the hearing officer determines that a person has failed to obey an order to testify or to produce evidence, and such failure is in knowing and willful disregard of the order, the hearing officer shall so certify.

e. The party or the hearing officer seeking to compel testimony or the production of evidence may, upon the certification provided for in paragraph D.3.d. of this section, file an appropriate action in a court of competent jurisdiction to compel compliance with the hearing officer's order.

4. Hearing Officer's Findings of Fact and Decision

a. The hearing officer shall make written findings of fact and shall issue a decision setting forth the questions presented, the resolution of those questions, and the rationale for the resolution. The hearing officer shall file the findings of fact and decision with the Director, DISCR, with a copy to the parties.

b. The Director, DISCR, shall forward to the Director, Section 6 Schools or the Military Department concerned and the Domestic Advisory Panel copies, with all personally identifiable information deleted, of the

hearing officer's findings of fact and decision or, in cases that are administratively appealed, of the final decision of the DISCR Appeal Board.

c. The hearing officer shall have the authority to impose financial responsibility for early intervention services, educational placements, evaluations, and related services under his or her findings of fact and decision.

d. The findings of fact and decision of the hearing officer shall become final unless a notice of appeal is filed under section F.1. of this appendix. The Section 6 School System or Military Department concerned shall implement a decision as soon as practicable after it becomes final.

E. Determination Without Hearing

1. At the request of a parent of the infant, toddler, preschool child or child when early intervention or special educational (including related) services are at issue, the requirement for a hearing may be waived, and the case may be submitted to the hearing officer on written documents filed by the parties. The hearing officer shall make findings of fact and issue a decision within the period fixed by paragraph D.1.n. of this appendix.

2. The Section 6 School System or Military Department concerned may oppose a request to waive the hearing. In that event, the hearing officer shall rule on the request.

3. Documents submitted to the hearing officer in a case determined without a hearing shall comply with paragraph D.1.g. of this appendix. A party submitting such documents shall provide copies to all other parties.

F. Appeal

1. A party may appeal the hearing officer's findings of fact and decision by filing a written notice of appeal with the Director, DISCR, within 5 calendar days of receipt of the findings of fact and decision. The notice of appeal must contain the appellant's certification that a copy of the notice of appeal has been provided to all other parties. Filing is complete upon mailing.

2. Within 10 calendar days of the filing of the notice of appeal, the appellant shall submit a written statement of issues and arguments to the Director, DISCR, with a copy to the other parties. The other parties shall submit a reply or replies to the Director, DISCR, within 15 calendar days of receiving the statement, and shall deliver a copy of each reply to the appellant. Submission is complete upon mailing.

3. The Director, DISCR, shall refer the matter on appeal to the DISCR Appeal Board. It shall determine the matter, including the making of interlocutory rulings, within 60 calendar days of receiving timely submitted replies under section F.2. of this Appendix. The DISCR Appeal Board may require oral argument at a time and place reasonably convenient to the parties.

4. The determination of the DISCR Appeal Board shall be a final administrative decision and shall be in written form. It shall address the issues presented and set forth a rationale for the decision reached. A determination denying the appeal of a parent in whole or in part shall state that the parent has the right

under Pub. L. 101-476, as amended, to bring a civil action on the matters in dispute in a district court of the United States without regard to the amount in controversy.

5. No provision of this part or other DoD guidance may be construed as conferring a further right of administrative review. A party must exhaust all administrative remedies afforded by this appendix before seeking judicial review of a determination made under this appendix.

G. Publication and Indexing of Final Decisions

The Director, DISCR, shall ensure that final decisions in cases arising under this appendix are published and indexed to protect the privacy rights of the parents who are parties in those cases and the children of such parents, in accordance with 32 CFR part 310.

Dated: September 30, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-24414 Filed 10-5-93; 8:45 am]

BILLING CODE 5000-04-M

32 CFR Part 86

[DoD Instruction 1402.5]

Criminal History Background Checks on Individuals in Child Care Services

AGENCY: Department of Defense.

ACTION: Interim final rule.

SUMMARY: This interim final rule is being issued to implement section 231 of the "Crime Control Act of 1990," Public Law 101-647, as amended by section 1094(a) of the "National Defense Authorization Act for Fiscal Years 1992 and 1993," Public Law 102-190 (codified at 42 U.S.C. 13041). This rule establishes policy and uniform procedures for conducting criminal history background checks of prescribed DoD personnel and applicants who are or, if hired, would be involved in a provision of child care services, pursuant to the statutory authorities cited above.

DATES: Effective January 19, 1993.

Written comments must be received by November 5, 1993.

ADDRESSES: Forward comments to: Office of Family Policy, Support and Services, Office of the Assistant Secretary of Defense (Personnel and Readiness), 4015 Wilson Blvd., Ballston Center Tower 3, room 911, Attention: Dr. JanaLee L. Sponberg, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. JanaLee L. Sponberg, at telephone number (703)-696-4555.

SUPPLEMENTARY INFORMATION: This interim final rule is issued to comply

with a statutory requirement and to permit DoD Components to issue consistent implementing guidance. The Department of Defense invites public comments on this interim final rule. It shall consider those comments in deciding whether, and, if so, how to amend this rule.

Executive Order 12291, "Federal Regulation"

It is hereby determined that 32 CFR part 86 is not a major rule. The rule does not:

- (1) Have an annual effect on the economy of \$100 million or more;
- (2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- (3) Have a significant adverse effect on competition, employment, investment, productivity, or innovation.

Public Law 96-354, "Regulatory Flexibility Act"

It is hereby certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because this guidance instructs the Department to conduct the required criminal history background checks for the small businesses. The primary effect on small businesses will be a reduction in administrative costs and other burdens resulting from the simplification and clarification of certain policies and at the elimination of policy differences among the Federal agencies promulgating this interim final rule.

Public Law 96-511, "Paperwork Reduction Act"

It is hereby certified that 32 CFR part 86 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

List of Subjects in 32 CFR Part 86

Child Care; Security.

Accordingly, title 32, subchapter B, is amended to add part 86 to read as follows:

PART 86—CRIMINAL HISTORY BACKGROUND CHECKS ON INDIVIDUALS IN CHILD CARE SERVICES

Sec.

- 86.1 Purpose.
- 86.2 Applicability.
- 86.3 Definitions.
- 86.4 Policy.
- 86.5 Responsibilities.
- 86.6 Procedures.

Appendix A to Part 86—Criminal History Background Check Procedures

Appendix B to Part 86—Criteria For Criminal History Background Check Disqualifications

Appendix C to Part 86—State Information Authority: 42 U.S.C. 13041.

§ 86.1 Purpose.

This part: (a) Implements Public Law 101-647, section 231 and Public Law 102-190, section 1094.

(b) Requires procedures for existing and newly hired individuals and includes a review of personnel and security records to include a Federal Bureau of Investigation (FBI) fingerprint check and State Criminal History Repositories (SCHR) checks of residences listed on employment or certification applications.

(c) Establishes policy, assigns responsibilities, and prescribes procedures for criminal history background checks for all existing and newly hired individuals involved in the provision of child care services as Federal employees, contractors, or in Federal facilities to children under the age of 18. The checks are required of all individuals in the Department of Defense involved in providing child care services defined in Public Law 101-647, and for policy reasons, those categories of individuals not expressly governed by the statute.

(d) Allows the Department to provisionally hire such individuals before the completion of a background check. However, at all times while children are in the care of that individual, the child care provider must be within sight and under the supervision of a staff person whose background check has been successfully completed. Healthcare personnel shall comply with guidance provided in the Memorandum from the Assistant Secretary of Defense for Health Affairs (ASD(HA))¹, April 20, 1992.

(e) Includes all individuals providing child care services to children in accordance with 32 CFR part 310, Federal Personnel Manual (FPM)², 32 CFR part 154, DoD Directive 6400.1³, DoD Instruction 6060.2⁴, DoD Instruction 6400.2⁵, DoD Directive 1400.13⁶, 32 CFR part 68, DoD Directive

6025.11⁷, DoD Directive 1015.1⁸, and 32 CFR part 212.

§ 86.2 Applicability.

This part applies to the Office of the Secretary of Defense, 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").

§ 86.3 Definitions.

Terms used in this part are defined as follows.

(a) *Appropriated Fund (APF) Employees.* Personnel hired by DoD Components with appropriated funds as defined in the FPM, Chapter 731. This includes temporary employees, 18 years old or older, who work with children.

(b) *Care provider.* As defined in Public Law 101-647, section 231 and Public Law 102-190, section 1094. Providers included are current and prospective individuals hired with APF and nonappropriated funds (NAF) for education, treatment or healthcare, child care or youth activities, individuals employed under contract who work with children and those who are certified for care. Care providers are individuals working within programs that include alphabetically: Child Development Programs, DoD Dependents Schools, DoD-Operated or -Sponsored Activities, DoD Section 6 School Arrangements, Foster Care, Private Organizations on DoD Installations, and Youth Programs. Background checks are required for all civilian and military providers (except military health care providers) involved in child care services who have regular contact with children.

(c) *Child.* An unmarried person, whether natural child, adopted child, foster child, stepchild, or ward, who is a family member of a military member or DoD civilian or their spouse, and who is under the age of 18 years; or is incapable of self support because of a mental or physical incapacity and for whom treatment is authorized in a medical facility of the Military Services, as defined in DoD Directive 6400.1.

(d) *Child abuse and/or neglect.* The physical injury, sexual maltreatment, emotional maltreatment, deprivation of necessities, or other maltreatment of a child. The term encompasses both acts and omissions on the part of a

responsible person, as defined in DoD Directive 6400.1.

(e) *Child care services.* DoD personnel and contractors who are involved in any of the following: "Child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services," as defined in Public Law 101-647, section 231.

(f) *Child Development Center (CDC).* An installation facility or part of a facility used for child care operated under the oversight of Component's Child Development Programs (CDPs) and as defined in DoD Instruction 6060.2.

(g) *Child Development Programs (CDPs).* Programs for dependents of DoD personnel provided in CDCs, family child care (FCC) homes, and alternative child care options. The care provided is on a full-day, part-day, or hourly basis. Care is designed to protect the health and safety of children and promote their physical, social, emotional, and intellectual development, as defined in DoD Instruction 6060.2.

(h) *Child sexual abuse.* Employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) or the rape, molestation, prostitution, or any other such form of sexual exploitation of children, or incest with children. All sexual activity between an offender and a child, when the offender is in a position of power over the child, is considered sexual maltreatment, as defined in DoD Instruction 6400.2.

(i) *Criminal history background check.* An investigation based on fingerprints and other identifying information obtained by a law enforcement officer conducted through the Federal Bureau of Investigation-Identification Division (FBI-ID) and SCHR of all States that an employee or prospective employee list as current and former residences on an employment application initiated through the personnel programs of the applicable Federal Agencies, as defined in Public Law 101-647 or through the personnel program of a given government contractor.

(j) *Defense Clearance and Investigations Index (DCII).* The central DoD record of investigative files and adjudicative actions such as clearances and access determinations, revocations,

¹ Copies may be obtained from OASD(HA) Room 3E346, The Pentagon, Washington, DC 220301-1200.

² Copies may be obtained from a Federal Depository Library, or a Federal Agency Personnel Office.

³ Copies may be obtained from the National Technical Information Service, 5285 Port Royal, Springfield, VA 22161.

⁴ See footnote 3 to § 86.1(e).

⁵ See footnote 3 to § 86.1(e).

⁶ See footnote 3 to § 86.1(e).

⁷ See footnote 3 to § 86.1(e).

⁸ See footnote 3 to § 86.1(e).

and denials concerning military, civilian, and contract personnel.

(k) *DoD Dependents Schools (DoDDS)*. Schools operated by the Department of Defense for minor dependents of military members or DoD civilians assigned to duty in foreign countries, as defined in DoD Directive 1400.13.

(l) *DoD-operated or -sponsored activity*. A contracted entity authorized by appropriate DoD officials to perform child care, education, treatment, or supervisory functions on DoD-controlled property. Examples include but are not limited to CDPs, FCC Programs, Medical Treatment Facilities, DoDDS, DoD Section 6 Schools, and Youth Programs.

(m) *DoD Section 6 Schools*. The educational arrangements made for the provision of education to eligible dependent children by the Department of Defense under Public Law 81-874, section 6, as defined in 32 CFR part 68, in the Continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

(n) *Family Child Care (FCC)*. Quarters-based child care provided in Government-owned or -leased quarters, in which care is provided on a regular basis for compensation, usually for more than 10 hours a week per child, to one or more (up to six) children, including the provider's own children under 8 years of age, as defined in DoD Instruction 6060.2

(o) *Foreign National Employees Overseas*. Non-U.S. citizens hired by the Department of Defense for employment on an overseas installation.

(p) *Foster care*. A voluntary or court-mandated program that provides 24-hour care and supportive services in a family home or group facility for children who cannot be properly cared for by their own family.

(q) *Government-contracted care providers*. An individual or a group of individuals hired under a Government contract to provide instruction, child care services, healthcare, or youth services. FCC providers are not considered contracted Government employees for this part.

(r) *Healthcare personnel*. Personnel involved in the delivery of healthcare to children under the age of 18 on a frequent and regular basis. See ASD(HA) memorandum dated April 20, 1992.

(1) *Medical and dental care staff*. Physicians, dentists, nurse practitioners, clinical social workers, clinical psychologists, physicians' assistants, physical therapists, and speech pathologists.

(2) *Clinical support staff*. Clinical providers not granted defined clinical privileges to include residents, registered nurses, licensed practical nurses, nursing assistants, play therapists, and technicians, and defined in DoD Directive 6025.11.

(s) *Installation Records Check (IRC)*. An investigation conducted through the records of all installations of an individual's identified residences for the preceding 2 years before the date of the application. This record check shall include, at a minimum, police (base and/or military police, security office, or criminal investigators or local law enforcement) local files check, Drug and Alcohol Program, Family Housing, Medical Treatment Facility for Family Advocacy Program to include Service Central Registry records and mental health records, and any other record checks as appropriate, to the extent permitted by law.

(t) *National Agency Check (NAC)*. As defined in 32 CFR part 154.

(u) *National Agency Check and Inquiries (NACI)*. As defined in the FPM, Chapters 731 and 736.

(v) *Nonappropriated Fund Instrumentalities (NAFI) Employees*. Personnel hired by the DoD Components, compensated from NAFI funds as defined in DoD Directive 1015.1. This includes temporary employees, 18 years old or older, who work with children.

(w) *Private Organizations on DoD Installations*. A nongovernmental entity authorized by the Department of Defense to perform child care services, education, or supervisory functions with children on DoD-controlled property, as defined in 32 CFR part 212. Examples include religious groups and associations, such as scouts.

(x) *Respite care*. Provides short-term child care and supportive services in a family home or group facility for children to relieve stress, prevent child abuse, and promote family unity for a parent, foster parent, guardian, or family member.

(y) *Regular contact*. Responsible for a child or with access to children on a frequent basis as defined by the Component.

(z) *Specified volunteer position*. A position, designated by the DoD Component Head or designee, such as installation commander, requiring an installation record check because of the nature of the volunteer work in child care services.

(aa) *State Criminal History Repository (SCHR)*. The State's central record of investigative files. State information, including addresses, phone numbers,

costs and remarks, is listed in appendix C to this part.

(bb) *Supervision*. Refers to having temporary responsibility for children in child care services, and temporary or permanent authority to exercise direction and control by an individual over an individual whose required background checks have been initiated but not completed.

(cc) *Temporary employees*. This category includes nonstatus appointments to a competitive service position for a specified period, not to exceed a year. This includes summer hires, student interns, and NAFI flexible category employees.

(dd) *Volunteer activities*. Activities where individuals offer assistance on an unpaid basis in child and youth programs or other activities on DoD installations. Examples include sports programs, religious programs, scouting programs, and preschools sponsored by private parent cooperatives or other associations conducted on the installation.

(ee) *Volunteers*. Individuals who offer program assistance on an unpaid basis.

(ff) *Youth programs*. DoD-sponsored activities, events, services, opportunities, information, and individual assistance responsive to the recreational, developmental, social, psychological, and cultural needs of eligible children and youth. Includes before and after school programs as well as holiday and summer camps.

§ 86.4 Policy.

It is Department of Defense policy to:

(a) Establish a standardized and comprehensive process for screening applicants for positions involving child care services on DoD installations and in DoD activities.

(b) Provide fair, impartial, and equitable treatment before an individual may be deemed suitable to serve as an employee, a certified care provider, a specified volunteer position, or as an individual employed under contract in activities covered by this part, 32 CFR part 310, Federal Personnel Manual (FPM), 32 CFR part 154, DoD Directive 6400.1, DoD Instruction 6060.2, DoD Instruction 6400.2, DoD Directive 1400.13, 32 CFR part 68, DoD Directive 6025.11, DoD Directive 1015.1, and 32 CFR part 212 by conducting a thorough review of all appropriate records as described in this part.

(c) Protect children by denying or removing from employment, contract, or volunteer status any applicant or current employee who is determined unsuitable to provide child care services because derogatory information is contained in a suitability investigation.

(d) Ensure that an individual is advised of proposed disciplinary action, decertification, or refusal to hire by the hiring authority or designee if disqualifying derogatory information is contained in a suitability investigation. The individual is given the opportunity to challenge the accuracy and completeness of reported information.

(e) Foster cooperation among the DoD Components, other Federal Agencies, State and county agencies, and other civilian authorities in conducting criminal history background checks.

§ 86.5 Responsibilities.

(a) The Assistant Secretary of Defense for Personnel and Readiness shall: (1) Develop policy for conducting criminal history background checks on individuals seeking positions involving child care services.

(2) Monitor compliance with this part.

(3) Coordinate oversight of criminal history background checks as specified under this part.

(b) The Heads of the DoD Components shall: (1) Develop procedures to ensure compliance with the requirements of this part, in accordance with appendix A to this part.

(2) Provide oversight of process and procedures to conduct criminal history background checks to include assignment of proponentcy.

(3) Provide technical support and resources as required.

(4) Coordinate participation of specific organizations within the DoD Component involved in the conduct of the checks.

(5) Ensure that applicants and employees are made aware of their rights under 32 CFR part 310 including the right to challenge accuracy of records.

(6) Maintain the records of all individuals hired, certified, or employed under contract for positions that involve child care services for 2 years following termination of their service.

(7) Establish a mechanism to evaluate all adverse information resulting from criminal history background checks, using the criteria in appendix B to this part. Final suitability decisions are made by the DoD Component Head or designee.

§ 86.6 Procedures.

The records of all existing employees and applicants for positions in child care services are reviewed by the Component designee according to the procedures prescribed in appendix A to this part.

Appendix A to Part 86—Criminal History Background Check Procedures

This appendix establishes the procedures for conducting criminal history background checks on existing and newly hired individuals required by Public Law 101-647, section 231 and Public Law 102-190, section 1094. Background checks are required for all civilian providers involved in child care services who have regular contact with children. The categories of providers include current and prospective individuals hired with APF and NAFI funds for education, treatment or healthcare, child care or youth activities, and individuals employed under contract involved in the provision of child care services. In addition to the mandates of Public Law 102-190, section 1094, the Department of Defense requires that military members (except healthcare personnel), foster or respite care providers, FCC providers and family members, and specified volunteers shall have checks specified in this part.

A. Conducting Checks

Component designees shall notify existing and newly hired individuals and contractors of the requirement for a review of personnel and security records to include an FBI fingerprint check and SCHR checks of residences listed on employment and security applications.

1. *Fingerprint Check.* Law enforcement personnel shall forward completed forms through channels to the Office of Personnel Management (OPM) or Defense Investigative Service (DIS) for processing of FBI fingerprint forms.

2. *State Criminal History Repository (SCHR) Check.* DoD Installation-level personnel offices, in collaboration with law enforcement and security personnel, shall process State criminal history background checks for employment and shall ordinarily communicate in writing with each State identified in appendix B to part 86, providing full identifying information on each applicant and request confirmation that the individual has not been convicted in that State of a sex crime, an offense involving a child victim, a drug felony, or a violent crime. The DoD Component Heads may establish alternate procedures for conducting SCHR checks; e.g., a computerized, written, or telephonic check. The DoD Components are not required to wait longer than 60 days from the date of the request for a response from the SCHR personnel before taking action on a particular application.

Authorities will depend on FBI fingerprint check validation if States do not respond.

3. *Installation Record Checks (IRC).*

Consists of a local record check on an individual for a minimum of 2 years before the date of the application. This record check shall include, at a minimum, police (base and/or military police, security office, criminal investigators, or local law enforcement) local files checks, Drug and Alcohol Program, Family Housing, Medical Treatment Facility for Family Advocacy Program Service Central Registry records and mental health records, and any other record checks as appropriate to the extent permitted by law. A Service DCII may be conducted. The IRC shall be conducted by DoD Component personnel at the installation

level. An IRC will be completed on individuals with a DoD affiliation such as living or working on an installation or is active duty member or family member. Individuals without DoD affiliation have no installation system of records to check and an IRC is not completed. Upon favorable completion of the IRC, an individual may be selected and provide child care services under line of sight supervision until the required background checks are completed.

B. Applicants

1. *Appropriated Fund (APF) Applicants*

a. Except as otherwise provided in this subsection, the DoD Components shall process APF applicants using currently established procedures for completing background checks described in 32 CFR part 310. APF applicants must complete a SF-171, "Application for Federal Employment," and attach an SF-87, "Fingerprint Chart," completed by a law enforcement officer; and an SF-85P, "Questionnaire for Public Trust Positions" (Annotate Block "B" with code 03), for conduct of a NACI. The package shall be forwarded to the OPM.

b. The DoD Components shall assign responsibility for conducting the criminal history background checks through the SCHR to personnel offices working with law enforcement or investigative agencies. They shall conduct checks in all States that an employee or prospective employee lists as current and former residences in an employment or security application. It is deemed unnecessary to conduct checks before 18 years of age because juvenile records are unavailable. If no response is received from the State(s) within 60 days, determinations based upon the FBI report may be made. Responses received after this determination has been made must be provided to the determining authority.

c. Under Public Law 102-190, section 1094, the DoD Components may employ an individual pending completion of successful background checks described in Public Law 101-647, section 231. If an individual is so employed, at all times while children are in the care of that individual, he or she must be within sight and under the supervision of an individual whose background checks have been completed, with no derogatory reports.

d. Once it is clear that no derogatory information exists, line of sight supervision is terminated by the designee. If a derogatory report exists, Component personnel procedures shall prescribe appropriate action consistent with the criteria contained in this part.

2. *Nonappropriated Fund Instrumentalities (NAFI) Applicants*

a. Except as otherwise provided in this subsection, the DoD Components shall process NAFI applicants following established procedures for completing background checks. NAFI applicants must complete a DD Form 398-2 "Department of Defense National Agency Questionnaire," with reason for request identified as OTHER and annotated as CHILD CARE, and FD Form 258, "FBI Applicant Fingerprint Card." Fingerprints shall be taken by the local law enforcement organization personnel and

together with the DD Form 398-2 shall be forwarded to: Defense Investigative Service, Personnel Investigations Center, P.O. Box 1083, Baltimore, MD 21203-1083.

b. The DoD Components shall follow the procedures in the FPM, Chapter 731 and 736 and in paragraph B.1.b., c., and d. of this appendix to obtain fingerprints for the FBI, conduct criminal history background checks through the SCHR, and maintain employment of individuals pending the successful completion of the background checks.

3. Foreign National Employees Overseas

Foreign national employees overseas, while not expressly included within the law, are subject to the following record checks or those equivalent in scope to checks conducted on U.S. citizens:

a. Host-government law enforcement and security agency checks at the city, State (province), and national level, whenever permissible by the laws of the host government.

b. Defense Central Investigative Index (DCII).

c. FBI checks (when information exists regarding residence by the individual in the United States for 1 year or more since age 18).

d. When permissible by the laws of the host government, host-government checks are requested directly by the employing Service or agency. As an alternative, the DoD Components may request that overseas Military Service investigative elements obtain appropriate host-government checks. Where host-nations' arrangements preclude comparable criminal history checks, foreign nationals will not be eligible for employment in child care services.

4. Temporary Employees

This category includes summer hires, student interns, and NAFI flexible category employees. Background checks for these individuals are processed according to funding source; i.e., for APF employees (to OPM) or NAFI employees (to DIS). Installation designated points of contact shall notify applicants of report disposition.

5. Healthcare Personnel

This category includes civilian personnel involved in the delivery of healthcare. Within the context of such medical care, line of sight supervision must be viewed through the prism of existing medical quality assurance, clinical privileging, and licensure directives, which require pre-employment screens, enhanced surveillance of new employees, and ongoing monitoring of the performance of all healthcare providers. These programs are inherent to both quality medical care and patient safety and are adequate and equivalent mechanisms for the sight and supervision requirements in paragraph B.1.c. and d. of this appendix. It should be noted that these quality assurance programs are not sufficient in and of themselves under Public Law 101-647, section 231. Therefore, the required FBI fingerprint check and the SCHR check must be completed as expeditiously as possible.

C. Current Employees

All currently employed individuals covered by this part shall have the FBI fingerprint and criminal history background check as described in Public Law 101-647, section 231. If the results of such checks, to include the SCHR, cannot be confirmed through an examination of available local records, action shall be initiated in accordance with paragraph B.1. of this appendix for APF employees and paragraph B.2. of this appendix for NAFI employees, and with paragraph D. of this appendix for individuals employed under contract. The SCHR checks are conducted in all cases in accordance with paragraph A.2. of this appendix. For the purposes of this part, no IRC is required for individuals employed before June 1991.

D. Government Contract Employees

1. Sponsoring activities are responsible for ensuring that the requirements in this part are included in the statement of work for all child care programs to be contracted. The contracting officer is responsible for performing any action necessary to verify that services provided by the contractor conform to contract quality requirements. Component designees for requiring activities shall ensure that the statement of work, at a minimum:

a. States that the contractor must ensure its employees have proper criminal history background checks as outlined in this part.

b. States that actual checks are performed by the Government.

c. Includes procedures that the contractor must follow to obtain checks for its employees; for example, identify the office where employees report for processing, identify proper forms to be completed, etc. Also, identify the DoD Component for billing purposes, and identify the appropriate security point of contact or installation commander as the authorized recipient of background check results.

d. States that employees may be permitted to work before completion of background checks, provided the employee is within sight of an individual who has successfully completed a background check.

e. States that employees have the right to obtain a copy of the background check report, whom they should contact for the copy and whom to contact for procedures to challenge the accuracy and completeness of the information in the report.

f. Requires that contractor employees who have previously received a background check must provide proof of the check or obtain a new one.

2. Requirements for child care services must be submitted to the contracting officer sufficiently in advance of the required performance start date to provide time for obtaining background checks. Sponsoring activities' designees shall coordinate with the contracting officer as soon as possible after a requirement for child care services becomes known.

3. Procedures for obtaining responses for background checks are the same as those for NAFI employees and response to derogatory information will occur through the appropriate designee and contractor. An IRC

will be performed if the individual is a military member or family member, or has worked or lived on a military installation within 5 years.

E. Other Providers

Criminal history background checks with the FBI and the States are not required. Duplication of previous background checks are not required for personnel where official records demonstrate that an adequate check has already been conducted. This category includes the following:

1. *Military Members.* These are active duty individuals (other than healthcare personnel) who seek to provide child care services as part of a normal duty assignment or are involved during off-duty hours. For these members an IRC and a current security clearance meet the requirements of this part. In the absence of a current security clearance, a name check of the DCII must be conducted. When military members are employed in an APF or a NAFI position they will abide by background check requirements listed in paragraphs B.1. and B.2. of this appendix.

2. *Foster and Respite Care Providers and Family Members.* These are individuals who seek to provide foster care or respite child care within Government-owned or -leased quarters. The care provider, all other adults, and each child, age 12 and older, residing within the applicant's household must receive an IRC. In addition, the Component designee must also obtain a name check of the DCII on all adults.

3. *FCC Providers and Family Members.* These are individuals who seek licensing to provide child care within government-owned or -leased quarters. The care provider, all other adults, and each child, age 12 and older, residing within the applicant's household receive an IRC. In addition, the Component designee must obtain a name check of the DCII on all adults.

4. *Specified Volunteers.* Installation commanders shall designate those positions that are determined to be "specified." Individuals working in specified volunteer positions will have an IRC check because of the nature of their work in child care services. The opportunity for contact may be extensive, frequent, or over a period of time. They include, but are not limited to, positions involving extensive interaction alone, extended travel, and/or overnight activities with children. An IRC is required for volunteers who are active-duty, a family member, or a DoD civilian overseas. A volunteer is allowed to work upon completion of a favorable IRC. Background checks are not required for volunteers whose services will be of shorter duration than is required to perform the background checks and who are under line of sight supervision by an individual who has successfully completed a background check. The Components are required to provide additional implementing guidance.

F. Employment Application Requirement

Public Law 101-647, section 231 requires that each application for employment shall include a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and

if so, requires a description of the disposition of the arrest or charge. The forms identified in paragraphs B.1.a. and B.2.a. of this appendix are signed by the applicant under penalty of perjury, with the applicable Federal punishment for perjury stated on the respective forms.

1. An applicant's signature indicates an understanding of the employer's obligation to require a record check as a condition of employment. Information on background checks shall be maintained in accordance with applicable Component implementing regulations.

2. Payment for the conduct of any criminal history background check is the responsibility of the requesting Service or agency.

3. The results of the background check are forwarded to the Component designee at the sending installation for appropriate action. A derogatory report would include, but not be limited to, the following applicable crimes: Any charge or conviction for a sex crime, an offense involving a child victim, a substance abuse felony, or a violent crime.

4. The hiring authority or designee is responsible for notifying the individual of a derogatory report. The individual may obtain a copy of the criminal history report and has the right to challenge the accuracy and completeness of any information contained in the report through the Privacy Program described in 32 CFR part 310. The individual may provide information concerning positive mitigating factors for any adverse information presented.

5. Employees whose criminal history background checks result in nonselection for employment or service shall be informed by the Component designee of the right to an administrative appeal under 32 CFR part 310. The individual may appeal with a specific request such as amendments to the records or request to file statement disagreeing with information in the record. If the employee's request for record information is refused, the individual is informed of his or her right to an administrative appeal. As appropriate, Component designees shall inform individuals of other avenues available to resolve matters of concern such as an administrative or negotiated grievance procedures. If the employee remains dissatisfied, he or she may seek a review. The Department of Defense recognizes the privacy interests and rights of all applicants and employees, and its own responsibility in ensuring a safe and secure environment for children within DoD activities or private organizations on DoD installations.

G. Record Re-Verification

This procedure consists of an IRC and a DCII name check and is required by the Component designee at a minimum every 5 years for all employees providing child care services and covers the time period since the completion of the last background check. NAFI employees who change duty stations will complete a new investigation when considered for employment. A new investigation is required by the Department of Defense if a break in service results in a time-lapse of more than 2 years. FCC, foster care and respite care providers, and their

family members will complete an IRC annually.

H. Supervision

Refers to temporary responsibility for children in child care services, and relates to oversight for temporary or permanent authority to exercise direction and control by an individual over an individual whose required background checks have been initiated but not completed. Use of video equipment is acceptable provided it is monitored by an individual who has successfully completed a background check. Supervision procedures pending completion of background checks for healthcare personnel suggest that the Surgeons General shall require close clinical supervision and full compliance with existing DoD Directives, Instructions, and other guidance (issued by the Department of Defense and the Military Department concerned) on quality assurance, risk management, licensure, employee orientation, and credentials certification. These policies rely on process and judgment, and meet the intent of the "direct sight supervision" provision, affording local commanders a flexible and reasonable alternative.

I. *Programs.* Requirements cover all DoD-operated activities and private organizations on DoD installations and include, but are not limited to:

1. Child Development Programs.
 - a. Child development centers, part-day preschools, and enrichment programs.
 - b. Family child care.
 - c. Contracted Services, whether personal or non-personal services.
2. Youth Programs.
3. Dependents Schools operated by the Department of Defense.
4. Medical treatment facilities.
5. Other contracted services.
6. Private organizations on DoD installations.
7. Volunteer activities.

J. Background Check Matrix

This identifies the requirements of this part for background checks by category of personnel. These checks are initiated through the personnel offices in collaboration with law enforcement and security personnel. (Reminder: An IRC may only be completed on an individual who is a military member or family member, or who lives or works on a military installation.)

1. Appropriated Fund (APF) Employees. FBI, SCHR, and IRC. (SF-171, SF-87, and SF-85P).
2. Non-appropriated Fund Instrumentalities (NAFI) Employees. FBI, SCHR, and IRC. (DD Form 398-2 and FD Form 258).
3. Foreign National Employees Overseas. IRC and local government check.
4. Temporary Employees. FBI, SCHR, and IRC.
5. Current Employees. FBI and SCHR.
6. Government Contract Employees. FBI, SCHR, and IRC.
7. Other Providers.

a. *Military Members.* Military members will have an IRC and, if no current security clearance exists, a name check of the DCII.

Checks are not required for military healthcare personnel.

b. *Foster and Respite Care Providers and Family Members (age 12 and older).* IRC and Service DCII (for adults).

c. *Family Child Care Providers and Family Members (age 12 and older).* IRC and Service DCII (for adults).

d. *Specified Volunteers.* IRC.

Appendix B to Part 86—Criteria For Criminal History Background Check Disqualification

The ultimate decision to determine how to use information obtained from the criminal history background checks in selection for positions involving the care, treatment, supervision, or education of children must incorporate a common sense decision based upon all known facts. Adverse information is evaluated by the DoD Component Head or designee who is qualified at the appropriate level of command in interpreting criminal history background checks. All information of record both favorable and unfavorable will be assessed in terms of its relevance, recentness, and seriousness. Likewise, positive mitigating factors should be considered. Final suitability decisions shall be made by that commander or designee. Criteria that will result in disqualification of an applicant require careful screening of the data and include, but are not limited to, the following:

A. Mandatory Disqualifying Criteria

Any conviction for a sexual offense, a drug felony, a violent crime, or a criminal offense involving a child or children.

B. Discretionary Criteria

1. Acts that may tend to indicate poor judgment, unreliability, or untrustworthiness in working with children.

2. Any behavior; illness; or mental, physical, or emotional condition that in the opinion of a competent medical authority may cause a defect in judgment or reliability.

3. Offenses involving assault, battery, or other abuse of a victim, regardless of age of the victim.

4. Evidence or documentation of substance abuse dependency.

5. Illegal or improper use, possession, or addiction to any controlled or psychoactive substances, narcotic, cannabis, or other dangerous drug.

6. Sexual acts, conduct, or behavior that, because of the circumstances in which they occur, may indicate untrustworthiness, unreliability, lack of judgment, or irresponsibility in working with children.

7. A wide range of offenses such as arson, homicide, robbery, fraud, or any offense involving possession or use of a firearm.

8. Evidence that the individual is a fugitive from justice.

9. Evidence that the individual is an illegal alien who is not entitled to accept gainful employment for a position.

10. A finding of negligence in a mishap causing death or serious injury to a child or dependent person entrusted to their care.

C. Suitability Considerations

In making a determination of suitability, the evaluator shall consider the following

additional factors to the extent that these examples are considered pertinent to the individual case:

1. The kind of position for which the individual is applying or employed.
2. The nature and seriousness of the conduct.
3. The recentness of the conduct.
4. The age of the individual at the time of the conduct.
5. The circumstances surrounding the conduct.
6. Contributing social or environmental conditions.
7. The absence or presence of rehabilitation or efforts toward rehabilitation.
8. The nexus of the arrests in regard to the job to be performed.

D. Questions

1. All applications, for each of the categories of individuals identified in § 86.3,

will include the following questions: "Have you ever been arrested for or charged with a crime involving a child? Have you ever been asked to resign because of or been decertified for a sexual offense? And, if so, "provide a description of the case disposition." For FCC, foster care, and respite care providers, this question is asked of the applicant regarding all adults, and all children 12 years and older, who reside in the household.

2. All applications shall state that the form is being signed under penalty of perjury. In addition, a false statement rendered by an employee may result in adverse action up to and including removal from Federal service.

3. Evaluation of criminal history background checks is made and monitored by qualified personnel at the appropriate level designated by the Component. Final suitability decisions are made by the designee.

Appendix C to Part 96—State Information

All SCHR checks should be accompanied by the following: 1. State form, if required. If no State form is required, the request should be on letterhead, beginning with the statement that the check is in accordance with Public Law 101-647. The request must include full identifying information, such as: Name, date of birth, social security number, complete addresses, etc.

2. Fingerprint set if required. Some State laws require a fingerprint set either on a State form or forms used by the agency.

3. Release statement signed by the applicant or employee. If required by the State, the release must be notarized.

4. Payment for the SCHR check.

5. Self-addressed, stamped envelope.

The following is an updated listing of State addresses, fees, and other information:

Address	Fee	Remarks
State of Alabama, Alabama Dept. of Public Safety, Attn: ABI Division, 5002 Washington Ave., Montgomery, AL 36130.	\$25	Name check, COMM: 205-242-4372.
State of Alaska, Alaska Dept. of Public Safety, Information Systems Section, 5700 Tudor Road, Anchorage, AK 99507.	20	Fingerprints required, reason for request required (comply with Pub. L.), name and address authorized request and receive SCHRC, COMM: 907-269-5511.
State of Arizona, Arizona Criminal Justice, Dept. of Public Safety, Information Systems Division, PO Box 6638, Phoenix, AZ 80550.	No check ...	Limited release, call/write, write for information. COMM: 602-223-2229.
State of Arkansas, Arkansas State Police, PO Box 5901, Little Rock, AR 72215.	No fee	Name check, written consent required, COMM: 501-221-8233.
State of California, Dept. of Justice, Bureau of Criminal Justice, Identification and Information Bureau, PO Box 903417, Sacramento, CA 94203-4170.	27	Fingerprints required, COMM: 916-739-2786.
State of Colorado, Crime Information Center, Colorado Bureau of Investigation, 690 Kipling Street, #3000, Lakewood, CO 80215.	4.50	Write/call for form, name check, COMM: 303-239-4222/4229.
State of Connecticut, Dept. of State Police, Bureau of Investigation, Building 4, 294 Colony Street, Meriden, CT 06450.	No fee	Name check, written consent required, copy of Pub. L. required, COMM: 203-238-6155.
State of Delaware, Delaware State Police-SBI, State Bureau of Investigation, PO Box 430, Dover, DE 19903.	25	Fingerprints required, COMM: 302-739-5871.
Washington, DC, Identification and Records Division, Metropolitan Police Dept., Room 2076, 300 Indiana Avenue, NW., Washington, DC 20001.	No fee	Name check, witten request required, COMM: 202-727-4245.
State of Florida, Florida Dept. of Law Enforcement, PO Box 1489, Tallahassee, FL 32302.	10	Name check, check to: Dept. of Law Enforcement, COMM: 904-488-6236.
State of Georgia, Georgia Criminal Information Center, PO Box 370748, Decatur, GA 30037-0748.	15	Write or call for form, notary and fingerprints required, COMM: 404-244-2644.
State of Hawaii, Criminal Justice Data Center, 465 South King Street, Room 101, Honolulu, HI 96813.	No fee	Name check, COMM: 808-587-3100.
State of Idaho, Idaho Dept. of Law Enforcement, Criminal Identification Bureau, 6064 Corporal Lane, Boise, ID 83704.	5	Name check, written consent required, payment to: Dept. of Law Enforcement, COMM: 208-327-7130.
State of Illinois, Bureau of Identification, 260 North Chicago Street, Joliet, IL 60431-1060.	14	Write or call for form, name check, COMM: 815-740-5184.
State of Indiana, Indiana State Police, 100 North Senate Avenue, Room 312, Indianapolis, IN 46204.	7	Write or call for form, name check, COMM: 317-232-8266.
State of Iowa, Commissioner Paul H. Wieck II, Iowa Dept. of Public Safety, Wallace State Office Building, Des Moines, IA 50319.	6	Release within State, COMM: 515-281-5138.
State of Kansas, Kansas Bureau of Investigation, 1620 Southwest Tyler, Topeka, KS 66612.	10	Write or call for form, name check, \$5 per name, over two names, COMM: 913-232-6000.
State of Kentucky, Kentucky State Police Records, State Office Building, 1250 Louisville Road, Frankfort, KY 40601.	4	Write or call for form, name check, COMM: 502-227-8700x214.
State of Louisiana, Louisiana State Police, Department of Public Safety, PO Box 66614, Baton Rouge, LA 70896.	13	Write or call for form, fingerprints required, COMM: 502-925-6095.
State of Maine, State Bureau of Investigation, Department of Public Safety, Maine State Police, 36 Hospital Street, Augusta, ME 04333.	No fee	Name check, reason for check required; i.e., comply with Pub. L., COMM: 207-624-7009.
State of Maryland, Criminal Justice Information Service, Central Repository, Building G4, 1201 Reisterstown Road, Pikesville, MD 21208.	18	Write or call for form, name check, COMM: 410-764-4501.
State of Massachusetts, Executive Office of Public Safety, Criminal History Systems Board, 1010 Commonwealth Avenue, Boston, MA 02215.	No fee	Write or call for form, name check, COMM: 617-727-0090x12.
State of Michigan, Michigan State Police, FOI Unit, 7150 Harris Drive, Lansing, MI 48913.	No check ...	No release, COMM: 517-322-5531.

Address	Fee	Remarks
State of Minnesota, Criminal Justice Information Systems, Bureau of Criminal Apprehension, Minnesota Dept. of Public Safety, 1246 University Avenue, St. Paul, MN 55104.	8	Name check, written consent required, COMM: 612-642-0670.
State of Mississippi, Department of Public Safety, ATTN: Identification Bureau, PO Box 958, Jackson, MS 39225.	No fee	Write or call for form, name check, COMM: 607-987-1212.
State of Missouri, Criminal Records Division, State Highway Patrol, Department of Public Safety, PO Box 568, Jefferson City, MO 65102.	5	Write or call for form, name check COMM: 314-751-3313.
State of Montana, Identification Bureau, Department of Justice, 303 North Roberts, Helena, MT 59620-1418.	5	Name check, COMM: 406-444-3625.
State of Nebraska, Nebraska State Patrol, PO Box 94907, State House Station, ATTN: CID, Lincoln, NE 68509-4907.	10	Name check, COMM: 402-471-4545.
State of Nevada, Nevada Highway Patrol, 555 Wright Way, Carson City, NV 89711.	15	Write or call for form, fingerprints required, COMM: 702-687-5300.
State of New Hampshire, New Hampshire State Policy HQ, Criminal Records, 10 Hazen Drive, Concord, NH 03305.	10	Write or call for form, name check, COMM: 603-271-2538.
State of New Jersey, Division of State Police, Records and ID Section, PO Box 7068, West Trenton, NJ 08625-0068.	12	Copy of Pub. L. required, name check, COMM: 609-882-2000.
State of New Mexico, Department of Public Safety, Records Bureau, PO Box 1628, Sante Fe, NM 87504-1628.	5	Write or call for form, name check, notary required, COMM: 505-827-9181.
State of New York, Division of Criminal Justice Services, Executive Park Tower, Stuyvesant Plaza, Albany, NY 12203.	No check ...	No release at current time, state requires an agreement with agency to process, COMM: 518-485-7685.
State of North Carolina, Division of Criminal Information, Bureau of Investigation, 407 North Blount Street, Raleigh, NC 27601-1009.	14	Fingerprint form required, copy of Pub. L. required, call/write for form, COMM: 919-662-4500.
State of North Dakota, Bureau of Criminal Information, PO Box 1054, Bismark, ND 58502.	20	Name check, written consent required, COMM: 702-221-6180.
State of Ohio, Bureau of Criminal Information, PO Box 385, London, OH 43140.	15	Write or call for form, written consent required, fingerprints required, COMM: 614-852-2556.
State of Oklahoma, Oklahoma Law Enforcement, Criminal History Information, ATTN: Criminal History, PO 11497, Oklahoma City, OK 73136.	10	Write or call for form, name check, COMM: 405-848-6724.
State of Oregon, Criminal ID, State Police, 155 Cottage Street, NE, Salem, OR 97310.	10	Name check, COMM: 503-378-3070.
State of Pennsylvania, Records and ID Division, Pennsylvania State Police, Dept. HQ, 1800 Elmerton Avenue, Harrisburg, PA 17110.	10	Write or call for form, name check, 10 COMM: 717-783-5592.
State of Rhode Island, Rhode Island State Police, PO Box 185, North Scituate, RI 02857.	No fee	Name check, written consent required, COMM: 401-647-3311.
State of South Carolina, State Law Enforcement Division, ATTN: Criminal Records, PO Box 21398, Columbia, SC 29221-1398.	10	Name check, COMM: 803-737-4205, DSN: 734-1110.
State of South Dakota, Division Criminal Investigation, Attorney General's Office, East Highway 34, Pierre, SD 57501-5070.	15	Write or call for form, fingerprints required, COMM: 605-773-3334.
State of Tennessee, Tennessee Criminal Information Center, Tennessee Bureau of Investigation, PO Box 100940, Nashville, TN 37210.	23	Write or call for form, fingerprints required, COMM: 615-741-3241.
State of Texas, Texas Crime Records Division, Texas Dept. of Public Safety, PO Box 15999, Austin, TX 78761-5999.	15	Fingerprints required, written consent required, COMM: 512-465-2079.
State of Utah, Bureau of Criminal Identification, Utah Dept. of Public Safety, 4501 South 2700 West, Salt Lake City, UT 84119.	No fee	Write or call for form, name check, copy of law required, COMM: 801-965-4571.
State of Vermont, Vermont Criminal Information Center, Dept. of Public Safety, PO Box 189, Waterbury, VT 05676.	No fee	Name check, written consent required, COMM: 802-244-8786.
Commonwealth of Virginia, Virginia Records Management Div., Dept. of State Police, PO Box 850761, Richmond, VA 23261-5076.	10	Write or call for form, name check, COMM: 804-674-2024.
State of Washington, Washington, State Patrol, Identification Section, PO Box 42633, Olympia, WA 98504-2633.	10	Write or call for form, name check, COMM: 206-753-0230/7272.
West Virginia State Police, Dept. of Public Safety, 725 Jefferson Road, South Charleston, WV 25309.	5	Write or call for form, name check, COMM: 304-746-2180.
State of Wisconsin, Crime Information Bureau, Dept. of Justice, ATTN: Records Data Unit, PO Box 2718, Madison, WI 53701-2718.	2	Write or call for form, name check, COMM: 608-266-7314.
State of Wyoming, Division of Criminal Investigation, 316 West 22nd Street, Cheyenne, WY 82002.	15	Write or call for form, fingerprints required, written consent required, COMM: 307-777-7181.

Dated: October 1, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 93-24503 Filed 10-5-93; 8:45 am]

BILLING CODE 5000-04-M

**DEPARTMENT OF VETERANS
AFFAIRS**

38 CFR Parts 3 and 4

RIN 2900-AG10

Zero Percent Disability Evaluations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations and its schedule for rating disabilities to authorize the assignment of a zero percent evaluation for any disability in the rating schedule when minimum requirements for compensable evaluation are not met. This amendment is intended to clarify the VA's

interpretation of the intent of the regulation.

EFFECTIVE DATE: October 6, 1993.

FOR FURTHER INFORMATION CONTACT:

John L. Roberts, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 17, 1993, at pages 28808 through 28809, VA published a proposed rule to authorize the assignment of a zero percent evaluation for any disability in the rating schedule when minimum requirements for compensable evaluation are not met. Interested parties were invited to submit written comments on or before June 16, 1993. Since no comments were received, the final rule is adopted as proposed.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

- (1) It will not have an annual impact on the economy of \$100 million or more.
- (2) It will not cause a major increase in costs or prices.
- (3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: August 26, 1993.

Jesse Brown,
Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 3 and 4 are amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.357 is revised to read as follows:

§ 3.357 Civil service preference ratings.

For the purpose of certifying civil service disability preference only, a service-connected disability may be assigned an evaluation of "less than ten percent." Any directly or presumptively service-connected disease or injury which exhibits some extent of actual impairment may be held to exist at the level of less than ten percent. For disabilities incurred in combat, however, no actual impairment is required.

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart A—General Policy in Rating

3. The authority citation for part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 1155.

4. Section 4.31 is revised to read as follows:

§ 4.31 Zero percent evaluations.

In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met.

[FR Doc. 93-24376 Filed 10-5-93; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-4785-1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the LaBounty Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region VII announces the deletion of the LaBounty site from the National Priorities List (NPL). The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. The reason this action is being taken is that Superfund Remedial Activities have been completed. EPA and the State of Iowa have determined that no further cleanup by the Responsible Party is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the site to date have been protective of public health, welfare and the environment.

EFFECTIVE DATE: October 6, 1993.

FOR FURTHER INFORMATION CONTACT: Paul W. Roemer, Remedial Project Manager, Superfund Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Ave., Kansas City, KS 66101, (913) 551-7694.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the LaBounty Site, Charles City, Floyd County, Iowa.

A notice of intent to delete for this site was published August 10, 1993 (58 FR 42519). The closing date for comments was thirty (30) days after the notice was published. EPA did not receive any comments on the proposed deletion.

Based upon a review of monitoring data from the site, EPA in consultation with the State of Iowa has determined that the site does not pose a significant risk to human health or the environment. The contaminant levels in the Cedar River have been reduced below the levels set by the State of Iowa. The site shall be monitored by the Responsible Party in accordance with the Operation and Monitoring Plan approved by EPA.

Future reviews of monitoring data will be conducted, in conjunction with the State of Iowa, at a minimum of every five years, or until such time when no hazardous substances, pollutants or contaminants remain at the site above levels that allow for unrestricted use and unlimited exposure.

The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by

the Hazardous Substance Response Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions if conditions at the site warrant such action. Deletion from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Environmental protection, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

William W. Rice,
Acting Regional Administrator.

For the reasons set out in the preamble 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site "LaBounty Dump, Charles City, Iowa" and revising the total number of sites from 1,078 to read 1,077.

[FR Doc. 93-24535 Filed 10-5-93; 8:45 am] BILLING CODE 6560-60-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7585]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: James Ross MacKay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds

that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Federal Insurance Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Impact Analysis. This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New eligibles—Emergency Program: Illinois: Gorham, Village of Jackson County	170954	August 2, 1993	January 26, 1979.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Jackson County Unincorporated Areas	170927	August 4, 1993	August 8, 1980.
Tennessee: Pittman Center, Town of Sevier County	470378	August 24, 1993	December 7, 1979
Iowa: Moorland, City of Webster County	190784	August 20, 1993	October 29, 1976.
Georgia: Jasper, City of Pickens County	130375	August 27, 1993	April 11, 1975.
New Hampshire: Errol, Town of Coos County	330206	August 31, 1993	January 17, 1975.
New eligible—Regular Program:			
Iowa: Pottawattamie County Unincorporated Areas	190232	August 3, 1993	April 4, 1983.
South Carolina: Bluffton, Town of Beaufort County	450251	August 24, 1993	December 18, 1986.
Missouri: Grand Falls Plaza, Town of Newton County ¹	290904	August 26, 1993	—
Oklahoma: Lahoma, Town of Garfield County	400294	August 27, 1993	September 27, 1991.
Reinstatements—Regular Program:			
Nebraska: Avoca, Village of Cass and Otoe Counties	310247	Aug. 3, 1979—Emerg.; Aug. 3, 1979—Reg.; May 17, 1989— Susp.; August 20, 1993—Rein.	September 18, 1986.
West Virginia: Jefferson County Unincorporated Areas	540065	December 15, 1975— Emerg.; October 15, 1980—Reg.; October 15, 1980—Susp.; Oc- tober 24, 1980— Rein.; August 2, 1993—Susp.; August 30, 1993—Rein.	August 2, 1993.
Withdrawal—Regular Program:			
Minnesota: Lake Shore, City of Cass County	270062	November 11, 1976— Emerg. June 22, 1984—Reg.; August 3, 1993—With..	—
Regular Program Conversions			
Region I			
Vermont: Jericho, Town of Chittenden County	500037	August 2, 1993, Sus- pension Withdrawn..	August 2, 1993.
Region II			
New York:			
Gates, Town of Monroe County	360416	.....do	August 2, 1993.
Middletown, Town of Delaware County	360209	.....do	August 2, 1993.
Watertown, City of Jefferson County	360354	.....do	August 2, 1993.
Watertown, Town of Jefferson County	360355	.....do	August 2, 1993.
Region III			
Pennsylvania:			
Bethlehem, Township of Northampton County	420980	.....do	August 2, 1993.
Delaware, Township of Northumberland County	421010	.....do	August 2, 1993.
Swatara, Township of Dauphin County	420398	.....do	August 2, 1993.
Region V			
Minnesota: Chisago County Unincorporated Areas	270682	.....do	August 2, 1993.
Region VI			
Oklahoma: Lindsay, City of Garvin County	400245	.....do	August 2, 1993.
Region I			
Connecticut: Berlin, Town of Hartford County	090022	August 16, 1993, Sus- pension Withdrawn..	May 3, 1993.
Maine:			
Glenburn, Town of Penobscot County	230106	.....do	August 16, 1993.
Guilford, Town of Piscataquis County	230117	.....do	August 16, 1993.
Region III			
Pennsylvania: Washington, Township of Westmoreland County	422196	.....do	August 16, 1993.
Region V			
Wisconsin: Eau Claire County Unincorporated Areas	555552	.....do	August 16, 1993.
Indiana:			
Brook, Town of Newton County	180180	.....do	August 16, 1993.
Hamlet, Town of Starke County	180241	.....do	August 16, 1993.
Hamilton, Town of Steuben County	180080	.....do	August 16, 1993.
Remington, Town of Jasper County	180101	.....do	August 16, 1993.

¹ The Town of Grand Falls Plaza has adopted Newton County's Flood Insurance Study dated April 17, 1985, with accompanying Flood Insurance Rate Map for flood insurance purposes.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: September 28, 1993.

Donald L. Collins,
Acting Administrator, Federal Insurance
Administration.

[FR Doc. 93-24538 Filed 10-5-93; 8:45 am]

BILLING CODE 6718-21-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[FCC 93-184]

Metric Conversion

AGENCY: Federal Communications
Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule (FCC 93-184), that was published Wednesday, August 25, 1993 (58 FR 44892). This rule related to the metric conversion of Federal Communications Commission regulations.

EFFECTIVE DATE: September 24, 1993.

FOR FURTHER INFORMATION CONTACT: David Wilson, Office of Engineering and Technology, (202) 653-8138.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction was released by the Federal Communications Commission on May 7, 1993, and was published in the *Federal Register* on August 25, 1993. This final rule contained changes to 47 CFR 87.187 that were inaccurate on August 25, 1993, due to other changes made to that section on May 26, 1993 (58 FR 30127).

Need for Correction

As published, the final rule contains errors that are misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on August 25, 1993, of the final rule (FCC 93-184), is corrected as follows:

§ 87.187 [Corrected]

Paragraph 1. On page 44954, in the second column, in amendatory instruction 2., in the 1st line, "(2) and (aa)" are corrected to read "(bb) and (cc)".

Para. 2. On page 44954, in the second column, in 47 CFR 87.187, the

paragraph designation "(z)" is corrected to read "(bb)".

Para. 3. On page 44954 in the second column, in 47 CFR 87.187, the paragraph designation "(aa)" is corrected to read "(cc)".

Federal Communications Commission,
William F. Caton,

Acting Secretary.

[FR Doc. 93-24337 Filed 10-5-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80-9; Notice 8]

RIN 2127-AE86

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic
Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions
for reconsideration.

SUMMARY: This notice responds to petitions for reconsideration of the final rule published on December 10, 1992, establishing a visibility enhancement scheme for large trailers, and amends Standard No. 108 pursuant to these petitions and to Supplemental Notices of Proposed Rulemaking (SNPRMs) that were published on January 22, and April 22, 1993. In response to the petitions for reconsideration, Standard No. 108 is amended to change the mounting height of conspicuity material from 1.25 m to the 375 mm—1525 mm range originally proposed, to reduce the width of the stripe required on rear underride guards from 50 mm to 38 mm, and to clarify requirements relating to horizontal location and to platform trailers with bulkheads and those without underride guards. All other petitions are denied. In response to the SNPRMs the final rule provides that trailers which are equipped with a conspicuity treatment conforming to S5.7, need not be equipped with the reflex reflectors required by Table 1. Also, the rule modifies Figure 29's requirements for specific intensity per unit area values for retroreflective sheeting, and those of S5.7.2.1 for reflex reflectors. These amendments relieve a regulatory burden on manufacturers of these trailers.

DATES: The final rule is effective November 5, 1993.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking (202-366-6346).

SUPPLEMENTARY INFORMATION:

Background of This Notice

On December 10, 1992, NHTSA published a final rule amending Federal Motor Vehicle Safety Standards No. 108 *Lamps, Reflective Devices and Associated Equipment* to add paragraph S5.7 *Conspicuity Systems*. The rule (Notice 6, 57 FR 58406) implemented a notice of proposed rulemaking (NPRM) published on December 4, 1991 (Notice 4, 56 FR 63474). Under the rule, trailers manufactured on or after December 1, 1993, which have an overall width of 80 inches or more and a GVWR of more than 10,000 pounds (except trailers manufactured exclusively for use as offices or dwellings), must be equipped with a conspicuity treatment of either retroreflective sheeting or reflex reflectors.

The comments responding to the NPRM suggested two modifications that appeared merited, but could not be adopted in the final rule because they were beyond the scope of the proposal. On January 22, 1993, NHTSA published a supplemental notice of proposed rulemaking (SNPRM) proposing a modification of the final rule to implement those comments (Notice 7, 58 FR 5699). The SNPRM was republished with a minor modification on April 22, 1993 (Notice 7A, 58 21553).

A discussion of the notices follows.

Petitions for Reconsideration of the December 1992 Rule

Petitions for reconsideration were received from the American Trucking Associations (ATA), the Truck Trailer Manufacturers Association (TTMA), the Insurance Institute for Highway Safety (IIHS), Advocates for Highway and Auto Safety (Advocates), and S.A. Heenan. In response to issues raised by the petitioners, further comments to the docket were submitted by Paul Olsen, CTI, the National Association of Trailer Manufacturers (NATM), Hackney and Sons, and United Van Lines. Comments relating to issues in the final rule were also received from Mirage Carriage Works, Sundowner Trailers and Wells Cargo.

There were eight principal issues raised by the petitions for reconsideration, which are discussed below.

1. Color or Retroreflective Sheeting

The final rule required the sides and rear of a trailer to be marked with retroreflective sheeting applied in red/white segments. ATA petitioned that the side segments be entirely in white, and presented three reasons in support.

1. Use of the same color(s) of material on both the side and rear will confuse approaching drivers. NHTSA disagrees. As it has explained previously, the agency does not consider strips of white alone to be sufficiently distinct from common highway markings. Further, the 28 to 53 foot length of the side treatment on the trailers is surely sufficiently greater than the 8-foot continuous rear stripe to distinguish the side from the rear at distances calling for a driver to take evasive action. Typically, the rear stripe will be accompanied by underride guard and upper corner treatments to further distinguish the rear, and the trailer will be equipped with distinctive clearance and identification lamps as well. For those reasons, NHTSA concludes that the requirement for red/white markings on both the side and rear will not confuse drivers.

2. Red reflectors on the front sides of trailers are prohibited by Federal Motor Carrier Safety Regulation 49 CFR 393.26. This is incorrect. The Motor Carrier Safety Regulation only prohibits red lamps and reflectors on the front of motor vehicles, and does not prohibit a red conspicuity treatment on the side of the trailer at the front.

3. Red side conspicuity material is prohibited by the State of New Jersey. NHTSA has discussed this matter with appropriate motor vehicle agency officials in New Jersey, and has found that there is no practical impediment to implementation of the red/white scheme in that State. Although the motor vehicle code may be interpreted as prohibiting a red/white color scheme, the State's policy is, in fact, to allow retrofit of trailers with the Federal conspicuity treatment. With respect to new trailers, effective December 1, 1993, the issue is moot. Under the preemption provisions of the National Traffic and Motor Vehicle Safety Act, no State will be able to maintain in effect any law that might prohibit an affected trailer manufacturer from complying with the conspicuity treatment specified in S5.7.

For the reasons given above, NHTSA denies the petition by ATA for reconsideration of the color requirements for conspicuity materials.

2. Configuration of Retroreflective Materials

IIHS and Advocates petitioned for a larger amount of retroreflective material

to be applied to the trailer sides. In addition, ATA and TTMA petitioned for elimination of requirements for material to be applied to rear underride guards and to bulkheads of platform trailers. These two petitioners also asked for clarification of the height and slant requirements for the "horizontal" side strips. Finally, TTMA asked that side curtain trailers be excluded from the conspicuity requirements.

1. The side perimeter should be outlined in full. It is the belief of IIHS and Advocates that motor vehicle safety would be enhanced with full side outlining, greatly exceeding the partial side outlining of Alternative 2 of the NPRM. NHTSA agrees that it is true that adding more material increases the light return and the sight threshold distance. However, it also adds to costs imposed upon the manufacturer which may be expected to be passed on to the consumer. The final rule expresses NHTSA's conclusion that enhancement of side conspicuity is adequately addressed by requiring only a broken single stripe of material. This is consistent with UMTRI's research findings that a single broken side stripe provided adequate sight distance for the side. NHTSA also believes that the reduction in the amount of material required from that which was proposed will encourage voluntary retrofitting of trailers not subject to the final rule, resulting in an even greater safety benefit on the nation's highways. Therefore, NHTSA is denying the petitions by IIHS and Advocates on this issue.

2. Rear underride guards should be excluded from conspicuity treatment. The petitions for elimination of the treatment of underride guards were posited on the arguments that not all trailers are equipped with them, and those that are in place are susceptible to damage. These issues were considered thoroughly in the development of the final rule. NHTSA anticipates that some underride guards will degrade in service but that this represents only a minority, and does not provide a reason for not applying the material in the first instance. There are simple steps that manufacturers can take to protect the material, such as mounting it in the inside of a steel channel bumper or placing small metal beads above and below the bumper stripe. Thus, NHTSA denies the petitions for excluding the underride guards. However, the agency is amending Standard No. 108 to allow a minimum width of 38 mm rather than 50 mm to facilitate protective designs and to encourage retrofit of existing trailers that may have underride guards narrower than 50 mm.

3. Platform trailers with bulkheads and side curtain trailers should be excluded from conspicuity markings. As for exclusion of platform trailers with bulkheads, NHTSA considered this possibility as well in formulation of the final rule. The agency does not agree with the argument of some petitioners that motorists approaching from the rear will be confused by an image in which conspicuity treatment on the bulkhead is about 40 feet ahead of the treatment of the rest of the rear. The slight foreshortening of the upper white stripes may produce a slightly shorter image than that of a van trailer of similar height, but the image will still create a partial outline whose perceived rate of change of size will provide a cue aiding judgment of closing speed. Therefore, the agency denies the petitions to exclude platform trailers with bulkheads from the conspicuity requirements. However, NHTSA is amending S5.7.1.4.1 to clarify that Element 2 of the rear marking is not required for container chassis or platform trailers without bulkheads, and that Element 3 of the rear marking is not required for trailers without underride protection devices.

NHTSA has also considered previously the question of side curtain trailers, and decided that an exclusion was not called for; the material may be placed on the frame if necessary. TTMA's petition on this issue is denied.

4. The mounting height for conspicuity materials is excessively restrictive. Several petitioners were concerned with the mounting height for conspicuity materials that was adopted by the final rule. The NPRM had proposed a range from 15 to 60 inches above the road surface, while the final rule was much narrower, specifying as close to 1.25 m as practicable. With this change, NHTSA meant to increase flexibility and to avoid the need for exceptions for classes of trailers. However, it has been brought to NHTSA's attention that the lower body surfaces of beverage trailers, drop side moving van trailers, and large non-commercial utility and livestock trailers are closer to the ground than those of van and platform trailers. Although it would be practicable to place the conspicuity treatment at the 1.25 m height adopted in the final rule, manufacturers and users would like to locate the conspicuity treatment to follow the lower body profile to maximize advertising space and to improve aesthetics. NHTSA has carefully considered these petitions. There is no practical effect on light entrance angles and the agency does not believe that there are any safety reasons

mitigating against allowing the mounting height range originally proposed. Accordingly, NHTSA grants the petitions for reconsideration of the mounting height of 1.25 m and is adopting the metric equivalent of the 15 to 60 inches originally proposed. The modified mounting height is "as close to 375 mm to 1525 mm as practicable."

5. "Horizontal" needs to be defined. Retroreflective sheeting is to be mounted horizontally, and TTMA asked for a definition of "horizontal." The word is intended to be descriptive rather than to connote a specific geometric tolerance, in other words, as horizontal as practicable. The structure of the side of a trailer is generally horizontal. The natural placement of stripes would be parallel to the floor of a solid-sided trailer and on the most horizontal member of an open sided trailer. To forestall a possible spate of inconsequentiality petitions on the point, NHTSA is amending the requirement to read "as horizontal as practicable."

3. Exclusion of Trailers With GVWRs Less Than 26,000 lbs

Petitions on this issue arrived too late to be considered as petitions for reconsideration, and, in accordance with agency procedures, have been considered as petitions for rulemaking. Petitions were received from NATM, Mirage Carriage Works, Sundowner Trailers, and Wells Cargo. They requested exclusion of trailers with GVWRs less than 26,000 pounds from this requirement on the basis that such vehicles do not experience the types of accidents associated with heavier commercial trailers.

NHTSA disagrees with this argument. Trailers of this size are expected to be used on rural roads and in local delivery service where backing across roads and making U turns are common, and where enhanced conspicuity will assist in accident avoidance maneuvers conducted by approaching drivers. The petitions for rulemaking are therefore denied.

4. Brightness

IIHS petitioned for an increase in the required brightness of retroreflective sheeting. S.A. Heenan asked for a change in the way the standard specifies the brightness of reflex reflectors.

1. Retroreflective sheeting should be brighter. According to IIHS, the UMTRI study of appropriate specifications for material brightness is flawed because it did not incorporate correction factors for dirty windshields and headlamps, and the presence of rain and fog. It cited conversations with Paul Olsen, the

principal investigator of the UMTRI study, in confirmation of its comments. However, Mr. Olsen disagreed, in written comments to the docket, with the IIHS' characterization of his views. Mr. Olsen had recognized these factors but did not represent them explicitly because there were no accepted correction factors based on hard data. Instead, he used pessimistic levels of the factors which were quantified by data in order to create a reasonable worst case which included the combined effect of several detrimental factors. He assumed for the UMTRI recommendation that the conspicuity material was 10 years old, and dirty to the point of a 70 percent loss of brightness, that the treated trailer was turned 30 degrees from the approaching vehicle, that the approaching vehicle was a truck, that the driver had a worse reaction time than the 95th percentile, and that the roadway was wet (adding to the stopping distance, which, under ordinary circumstances, is already greater for a truck than for a passenger car). These factors resulted in a recommendation which Mr. Olsen characterized as "very conservative." As NHTSA stated in the preamble to the NPRM, the brightness values are four times greater than the minimum brightness that UMTRI measured as adequate under good conditions, for the purpose of accommodating weather, dirt, and other deleterious effects.

A report has been written by Tansley and Petrusic of Carleton University, Canada, that also criticizes the brightness values adopted by the agency. NHTSA's specification is based on UMTRI's recommendation for a 740-foot stopping-sight distance (SSD) to allow for the worst case situation of a truck traveling 70 mph on a wet road. The Canadian report uses the measure of decision-sight distance (DSD) at 60 mph to conclude that the conspicuity treatment should be visible at not less than 1150 feet (or, at 70 mph, not less than 1400 feet).

Both DSD and SSD are criteria developed by the American Association of State Highway and Transportation Officials (AASHTO) for the design of highway signs. DSD was developed for situations in which it is undesirable for drivers to stop, such as at construction zones incorporating lane closures. DSD allows time for the driver to evaluate the problem, find a gap in adjacent traffic, adjust speed, and merge into another lane. The distances dictated by DSD are considerably longer than those required by SSD because of the potential complexity of the merge maneuver. SSD is appropriate for a situation in which a driver must stop for a truck blocking

the road ahead. NHTSA believes that the SSD criteria employed by UMTRI were the appropriate basis for determining the material brightness requisite for safety. The effectiveness of conspicuity treatments tested in the Vector study do not support DSD as the regulatory criterion, and their effectiveness is consistent with expectations based on SSD.

For the reason discussed above, NHTSA denies the IIHS petition for a reconsideration of the brightness requirements.

2. Brightness of reflex reflectors should be determined in a different manner. The second brightness issue was raised by S.A. Heenan, of Cortina Tool and Molding Co., a manufacturer of reflex reflectors. Mr. Heenan asked that brightness be rated in light return per length of reflector grouping (with the manufacturer specifying the grouping details) rather than in light return per reflector with a maximum reflector spacing.

The final rule for the reflex reflector option specified reflectors consistent with the requirements of Standard No. 108 (SAE J594f) except for enhanced performance at greater light entrance angles. The maximum spacing between reflectors within a grouping (analogous to a color segment length of sheeting material) is 100 mm so that a reflex reflector array will produce the same minimum light return as that required for sheeting material, and will create a similar appearance at night. Mr. Heenan, however, believes that the 100 mm spacing is too restrictive and that the same light return per length of array could be achieved by different combinations of brightness and spacing. He also argues that his customers, who may not be comfortable with the metric system, will be burdened if mounting an integer number of reflectors per foot does not correspond to the minimum requirement.

NHTSA agrees with Mr. Heenan that different combinations of brightness and spacing will produce an equivalent image at night as long as the reflector spacing is not too great. However, allowing a manufacturer to choose any design spacing up to 150 mm would require new compliance marks to indicate the design spacing. While NHTSA has considered adding another compliance option, it believes that Standard No. 108 already provides sufficient flexibility in this area. Standard No. 108 contains a dual set of requirements to accommodate both reflex reflectors and sheeting material, and NHTSA does not consider it desirable to add more complexity. Since reflex reflectors capable of meeting the

existing requirements are expected to be about 2 inches square in size, mounting them at intervals not greater than 100 mm does not seem to be burdensome enough to justify allowing a second reflector option that would create a new marking system.

If trailer manufacturers are uncomfortable with the metric system, they may choose to mount reflectors at intervals of 3¹/₁₆ inches with the same result. It is impossible to avoid requirements that do not translate into even feet when the Departmental policy is to use metric units as primary units.

For the foregoing reasons, Mr. Heenan's petition for reconsideration of the spacing of reflex reflectors is denied.

5. Application to Trucks

IHS petitioned that the applicability of the conspicuity system requirements in S5.7 be extended to trucks and truck tractors. It cited accident statistics in support of its request. Because the NPRM and final rule did not include trucks and truck tractors, NHTSA cannot at this time proceed to amend the final rule to include these categories of vehicles without contravening the Administrative Procedure Act which requires adequate notice of rulemaking actions. Therefore, the IHS petition is denied. However, NHTSA considers that this is an appropriate candidate for study and possible future action on enhancing the visibility of trucks and truck tractors, and will review the data available, including the data submitted by IHS.

6. Benefit Computations

Without requesting reconsideration of the rule on the basis of its comment, IHS faulted NHTSA for not considering medical cost savings as a direct benefit as the agency had done with property damage savings.

Typically, NHTSA has prescribed only property damage savings (and sometimes travel delay savings) as a direct balance against regulatory costs. However, NHTSA explicitly considers medical expenses as well as other economic losses caused by injury and death in determining the appropriate societal cost to prevent "equivalent fatalities." This policy has the effect of lumping medical costs (which may be as quantifiable as property damage costs) with more ambiguous "soft" costs such as lost market and household productivity. The results of NHTSA's calculations of a rule's "cost per equivalent fatality prevented" are presented (with appropriate comments and discussion) in its regulatory evaluations. These values are not discussed in the preambles to the

agency's rules because, without a fairly extensive clarifying discussion, a straightforward presentation of the values can mislead readers into believing that the agency places an absolute dollar value on human life.

7. Procedural Correctness of Final Rule

Advocates petitioned for reconsideration of the final rule on the basis that the agency combined elements of Alternative 1 and Alternative 2 rather than choosing one of them. It specifically objected to the elimination of the side outlining elements of Alternative 2. It also claimed that there is insufficient "evidence" in the rulemaking record to support the final rule because "the regulatory decision ignores the favorable findings of the earlier Vector Enterprises study on the benefits of perimeter delineation of van-type trailer sides and instead bases its final rule on the insufficient research effort" of UMTRI.

Advocates' petition is denied. The NPRM provided an adequate opportunity for comment on trailer marking requirements and it was a logical outgrowth of the proposal for NHTSA to fashion a final rule combining elements of both the marking schemes for which comment was sought. Although Vector suggested full outlining of the sides with 4-inch tape, its actual study was conducted using 2-inch tape and a single side stripe, without outlining the side perimeter. The only "findings" by Vector are those using this treatment, essentially the treatment that NHTSA adopted.

8. Use of Reflex Reflectors in Conspicuity Treatments

Advocates complained of the option in the final rule that allows use of reflex reflectors to provide conspicuity treatment. It claims that "reflex reflectors will be prone to much more rapid degradation from damage and obscuration by road grime, snow, and ice than reflective sheeting."

Although hard plastic reflectors have less impact resistance than sheeting material, NHTSA has no reason to believe that they are any more subject to being obscured by dirt or weather than sheeting material. Reflex reflectors can provide the same essential safety function as retroreflective sheeting, and they have been used as motor vehicle equipment for at least 50 years.

Advocates also claimed that conspicuity treatments using reflectors create an image less recognizable as a trailer than treatments using sheeting material. It quotes the UMTRI report in support of this argument. However, after reviewing this argument and the UMTRI

report, NHTSA notes that the UMTRI discussion cited by Advocates relates to conspicuity patterns, not devices. There were no reflex reflectors used in this aspect of the study, and UMTRI simply used the words "reflex reflectors" as a shorthand expression for certain extremely discontinuous patterns of sheeting material shaped like dots.

NHTSA therefore finds no basis for granting the petition for reconsideration of the use of reflex reflectors as an alternative to retroreflective sheeting, and denies the petition.

The SNPRMs

Comments were received from ATA, TTMA, IIHS, Advocates, 3M, Reflexite, Grote, and Truck Safety Equipment Institute (TSEI).

1. Performance of Retroreflective Sheeting

Brightness of retroreflective material is expressed in "specific intensity per unit area" or "SIA". SIA is specified in Standard No. 108's Figure 29 at observation angles of 0.2 degree and 0.5 degree, and light entrance angles of -4 degrees and 30 degrees. Several commenters, including 3M, TSEI and Peterson Manufacturing, voiced a need for values at an entrance angle of 45 degrees. The value suggested was 60, as contained in SAE J1967. This appeared to be based upon the characteristics of the retroreflective material used in the Vector study (see Notice 4, the NPRM, for a discussion of the study). The SNPRMs proposed that Figure 29 be amended to add a value of 60 at an entrance angle of 45 degrees and an observation angle of 0.2 degree for DOT-C2 white retroreflective material. An appropriate value was also proposed for 0.5 degree, as were values for red retroreflective materials. The proposal extended to DOT-C3 and DOT-C4 materials as well.

Stimsonite commented to the NPRM that the ratio of red to white brightness of retroreflective material is constant for changes in observation angle. This means that the value of 10 SIA adopted for DOT-C2 red material at 0.5 degree and entrance angles of -4 degrees and 30 degrees should be 15, and not 10 as adopted. NHTSA proposed an appropriate amendment of Figure 29 to ensure consistency.

The intent of the conspicuity rule is to require the same light return from reflex reflector conspicuity systems as required from systems of retroreflective material. Thus, the agency proposed corresponding changes to S5.7.2.1(b) and (c) to establish values at 45 degrees for red and white reflex reflectors. The value of 75 millicandelas/lux at a light

entrance angle of 45 degrees for red reflex reflectors and the value of 300 millicandelas/lux for white reflex reflectors at the same angle creates the same light return from three reflex reflectors as was proposed for 300 mm of 50 mm wide sheeting material at a light entrance angle of 45 degrees. After the publication of the January SNPRM, a caller brought to NHTSA's attention that the agency had failed to include reflex reflectors, and the SNPRM was republished in April to include them.

The commenters supported the proposal, and S5.7 is amended as proposed, for the reasons stated above.

2. Redundancy of Reflex Reflectors

Some commenters to the NPRM stated that the requirements for conspicuity materials obviate the need for some existing lamps and reflectors. UPS asked that clearance lamps be eliminated, while TTMA requested the elimination of identification lamps and reflex reflectors for trailers equipped with conspicuity treatment. The American Petroleum Institute suggested adding side marker lamps as well to the list of the items to be eliminated. On the other hand, Trucklite and Grote opposed elimination of any lamps and reflectors, believing that each has a safety function to perform.

The agency did not propose elimination of identification, clearance, or marker lamps for trailers equipped with conspicuity materials. The conspicuity treatment is intended to augment lighting devices, not substitute for them. Trucklite pointed out that, even granting the benefits of conspicuity treatment, safety depends on the light output of lamps in extreme weather conditions, when the trailer is dirtier than normal, or when the headlamps of an approaching vehicle are faulty.

However, the agency believed there could be some duplication of safety mission between the reflex reflectors required by the standard and the conspicuity treatment required by paragraph S5.7. Table I of Standard No. 108 requires that large trailers be equipped with 2 amber reflex reflectors located at the side front, 2 red reflex reflectors located at the side rear, and 2 red reflex reflectors on the rear. If the overall length of the trailer is 30 feet or more, intermediate side reflex reflectors, amber in color, must be added. Under Table II, reflex reflectors may be mounted at any height between 15 and 60 inches. Thus, rear and side reflex reflectors could be considered redundant, even though amber reflex reflectors on the front and midpoint of large trailers would be replaced with red conspicuity treatment.

NHTSA therefore proposed that new trailers manufactured with a conspicuity treatment that meets S5.7 need not be equipped with reflex reflectors as required by Table I. The agency asked for comments on whether this proposed change should apply only to vehicles whose conspicuity treatment consists entirely of reflex reflectors.

ATA, TTMA, 3M and Reflexite supported the proposal. In response to NHTSA's question, Grote and TSEI commented that the option should be restricted to trailers equipped with a conspicuity treatment consisting of reflex reflectors. The weathering capability of sheeting, according to these commenters, is unknown. Further, damage to sheeting could go unnoticed while damage to reflex reflectors is obvious. Therefore, maintaining dual conspicuity systems is in the interests of safety. However, 3M, a principal manufacturer of sheeting material, cited the material's durability and impact resistance. ATA pointed out that many of the reflectors are only stamped discs of sheeting material.

NHTSA does not agree with comments that question the durability of retroreflective sheeting. Research performed by UMTRI confirms its long term performance. Standard No. 108 incorporates contemporary industry standards for both retroreflective sheeting and reflex reflectors as the basis for the minimum Federal standards for these products. The standards differ in test methods, such as the weathering tests which call for 3-years outdoor exposure of reflex reflector plastics, but 2200 hours of accelerated weathering of sheeting material using a carbon-arc lamp. However, there appear to be no safety reasons to prefer one test method over the other when both products deliver the essential performance of retroreflection and reasonable durability.

Advocates also disagreed with the proposal, citing lack of research on the functional relationship between reflectors and conspicuity material. NHTSA believes that research is unnecessary to demonstrate the relationship. Reasonably, when two or three reflect reflectors (or small discs of sheeting material) are placed adjacent to a conspicuity array reflecting at least 20 times the light, their images become insignificant additions to the large array.

NHTSA has therefore concluded that trailer manufacturers using either reflex reflectors or retroreflective sheeting for their conspicuity treatment ought not to be required to provide as well the reflex reflectors required by Standard No. 108,

and is amending Standard No. 108 to so provide.

Miscellaneous Issues

Reflexite suggested adding a brightness specification at an observation angle of 0.1 degree in addition to the 0.2 and 0.5 degrees specified in the final rule. NHTSA does not believe that this is required for safety. At the 740 foot viewing distance cited in the UMTRI study on brightness, the observation angle for the typical car headlamp height and driver eye height is greater than 0.14 degree. Thus, any increased brightness at less than 0.14 degree would not even be visible to the typical driver at what NHTSA considers to be an adequately far distance.

ATA suggested that the agency use SAE J1967 rather than ASTM D 4956-90 to specify the qualities of retroreflective sheeting because it includes an immersion test using car wash detergent, and diesel and another reference fuel. NHTSA will consider this comment as a suggestion for future rulemaking to incorporate the fluid resistance test of SAE J1967. However, an UMTRI study sponsored by NHTSA demonstrated that retroreflective sheeting commonly used on trucks withstood road exposure, specifically including chemicals used in washing trucks.

The agency has received questions regarding the applicability of the conspicuity requirement to remanufactured trailers. As a general rule, remanufactured trailers must comply with the same FMVSS as new trailers, unless it meets the exceptions provided by 49 CFR 571.7(e).

Effective Date

The effective date of the amendments to Standard No. 108 effected by this notice is November 5, 1993. On March 2, 1993, NHTSA changed the effective date when the amendments of December 10, 1992, will be added to the text of the standard as it appears in the Code of Federal Regulations (Notice 6A, 58 FR 11974). This change had no substantive effect since paragraph S5.7 containing substantive requirements for conspicuity treatments retained the originally stated date of December 1, 1993, for mandatory compliance with the requirements. Because December 1, 1993, is the general effective date for the conspicuity requirements of S5.7 that are modified herein in a manner that relieves a restriction upon manufacturers, it is found for good cause shown that an effective date earlier than 180 days after issuance of this final rule is in the public interest.

Rulemaking Analyses**Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures**

NHTSA has considered the impacts of this rulemaking action and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation," nor is it significant under Department of Transportation regulatory policies and procedures. The regulatory impacts of this notice are so minimal that preparation of a full regulatory evaluation is not warranted. NHTSA estimates that the potential cost savings that could be realized by elimination of superfluous reflectors will be a total of \$1.7 million a year. A Regulatory Evaluation was prepared for the original final rule regarding conspicuity and is available for examination by the public in the docket.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities. Although trailer manufacturers are generally small businesses within the meaning of the Regulatory Flexibility Act, the agency estimates that compliance cost savings to the trailer buyer who chooses to eliminate reflectors will average \$10 to \$13 per trailer. Further, small organizations and governmental jurisdictions will not be significantly affected as the price of the new trailers equipped with conspicuity treatment will be negligibly impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the

environment. Retroreflective material is non-toxic. There will be a materials saving from manufacturing fewer reflex reflectors. The rule will not have an effect upon fuel consumption.

Civil Justice

This rule does 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.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 is amended by adding Paragraph S5.1.29, and revising paragraphs S5.7.1.4.1, S5.7.1.4.1(a), S5.7.4.1(c), S5.7.1.4.2(a), S7.2.1(b) and S7.2.1(c) to read as follows:

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment.

S5.1.1.29 A trailer equipped with a conspicuity treatment in conformance with paragraph S5.7 of this standard need not be equipped with the reflex reflectors required by Table I of this standard if the conspicuity material is placed at the locations of the reflex reflectors required by Table I.

S5.7.1.4.1 *Rear.* Retroreflective sheeting shall be applied to the rear of each trailer as follows, except that

Element 2 is not required for container chassis or for platform trailers without bulkheads, and Element 3 is not required for trailers without underride protection devices:

(a) Element 1: A strip of sheeting, as horizontal as practicable, in alternating colors across the full width of the trailer, as close to the extreme edges as practicable, and as close as practicable to not less than 375 mm and not more than 1525 mm above the road surface at the stripe centerline with the trailer at curb weight.

(c) Element 3: A strip of sheeting in alternating colors across the full width of the horizontal member of the rear underride protection device. Grade DOT C2 material not less than 388 mm wide may be used.

S5.7.1.4.2 Side

(a) A strip of sheeting, as horizontal as practicable, in alternating colors, originating and terminating as close to the front and rear as practicable, as close as practicable to not less than 375 mm and not more than 1525 mm above the road surface at the stripe centerline with the trailer at curb weight, except that at the location chosen the strip shall not be obscured in whole or in part by other motor vehicle equipment or trailer cargo. The strip need not be continuous as long as not less than half of the length of the trailer is covered and the spaces are distributed as evenly as practicable.

S5.7.2.1

(b) Each red reflex reflector shall also provide, at an observation angle of 0.2 degree, not less than 300 millicandelas/lux at any light entrance angle between 30 degrees left and 30 degrees right, including an entrance angle of 0 degree, and not less than 75 millicandelas/lux at any light entrance angle between 45 degrees left and 45 degrees right.

(c) Each white reflex reflector shall also provide at an observation angle of 0.2 degree, not less than 1250 millicandelas/lux at any light entrance angle between 30 degrees left and 30 degrees right, including an entrance angle of 0 degree, and not less than 300 millicandelas/lux at any light entrance angle between 45 degrees left and 45 degrees right.

3. Figure 29 at the end of § 571.108 is revised as follows:

FIGURE 29.—MINIMUM PHOTOMETRIC PERFORMANCE OF RETROFLECTIVE SHEETING IN CANDELLA/LUX/SQUARE METER

Entrance angle	Observation angle				Grade
	0.2 Degree		0.5 Degree		
	White	Red	White	Red	
-4 degree	250	60	65	15	DOT-C2
30 degree	250	60	65	15	DOT-C2
45 degree	60	15	15	4	DOT-C2
-4 degree	165	40	43	10	DOT-C3
30 degree	165	40	43	10	DOT-C3
45 degree	40	10	10	3	DOT-C3
-4 degree	125	30	33	9	DOT-C4
30 degree	125	30	33	8	DOT-C4
45 degree	30	8	8	2	DOT-C4

Issued on September 30, 1993.
 Howard M. Smolkin,
 Executive Director.
 [FR Doc. 93-24517 Filed 10-5-93; 8:45 am]
 BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1017, 1018, 1312, 1313 and 1314

[Ex Parte No. 508]

Fee Billing and Collection

AGENCY: Interstate Commerce Commission.

ACTION: Lifting of stay of effective date.

SUMMARY: On February 9, 1992 at 58 FR 7748, the Commission published final rules in this proceeding which were to be effective on April 3, 1993. Due to technical difficulties with the development of the computerized fees and billing system which support the fee billing and collection program, it was necessary to stay the effective date of these rules until further notice at 58 FR 17788, April 6, 1993. That system is now operational; therefore, the stay is being lifted.

DATES: The rules are effective on October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Anthony Jacobik, Jr., (202) 927-5827. [TDD for hearing impaired: (202) 927-5721].

Decided: October 1, 1993.
 By the Commission, Chairman McDonald.
 Sidney L. Strickland, Jr.,
 Secretary.

[FR Doc. 93-24651 Filed 10-5-93; 8:45 am]
 BILLING CODE 7035-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB83

Endangered and Threatened Wildlife and Plants; Final Rule to Determine a Utah Plant, of *Lesquerella tumulosa* (Kodachrome Bladderpod), as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines a Utah plant species, *Lesquerella tumulosa* (Kodachrome bladderpod), to be an endangered species. *L. tumulosa* is endemic to lower elevations of the Paria River drainage in Kane County in southern Utah, where it grows on soils derived from the Carmel geological formation. *L. tumulosa* exists in only one population that consists of about 20,000 plants. Its habitat is impacted by off-road vehicles and mineral development. This determination that *L. tumulosa* is an endangered species provides the plant protection under the Endangered Species Act.

EFFECTIVE DATE: November 5, 1993.

ADDRESSES: The complete file of this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address (801/975-3630).

SUPPLEMENTARY INFORMATION:

Background

The Kodachrome bladderpod was discovered in 1966 by Rupert Barneby at

a site in the Kodachrome Basin, Paria River drainage, northern Kane County, Utah. The plant has undergone several taxonomic revisions. Barneby (1966) described the plant as *Lesquerella hitchcockii* ssp. *tumulosa*, comparing the taxon with *Lesquerella hitchcockii* ssp. *rubicundula* (now *Lesquerella rubicundula*) from the nearby Paunsagunt Plateau. Reveal (1970), in a taxonomic treatment of the *Lesquerella hitchcockii* complex, elevated *L. h.* ssp. *tumulosa* to species rank as *Lesquerella tumulosa*. Rollins and Shaw (1973) submerged *L. tumulosa* in *L. rubicundula*. Finally, Welsh and Reveal (1977) and Welsh et al. (1987) re-established *L. tumulosa* based on its distinctive morphology, ecological requirements, and spatial separation from other similar plants.

Welsh et al. (1987) treated *L. tumulosa* as a species and distinguished it from its close relative, *L. rubicundula*. *L. tumulosa* has very small linear leaves and a distinctive pulvinate growth form arising from a many-branched caudex, whereas *L. rubicundula* has spatulate leaves and a caespitose growth form arising from a simple to few-branched caudex. *L. tumulosa* is restricted to very xeric shale outcrops at about 1,740 m (5,700 feet) elevation; *L. rubicundula* grows on more mesic limestone soils at about 2,040 m (6,700 feet) elevation and higher. *L. tumulosa* is restricted to a small area in the Kodachrome Basin; *L. rubicundula* is restricted to a limited area on the Paunsagunt Plateau. There are no known intermediate populations between these two species.

Lesquerella tumulosa is a perennial herbaceous plant. It has a densely pulvinate caespitose growth from a many-branched caudex, and forms hemispheric clumps or cushions. The caudex branches are clothed with numerous marcescent leaves and leaf bases. The stems are 1 to 4 cm (0.4 to 1.6 in) in length and have mainly basal

leaves. The leaves are 2 to 10 mm (0.1 to 0.4 in) long and about 1 mm (0.05 in) wide and are pubescent with stellate hairs. Leaves are not differentiated into a blade and petiole. The flowers of *L. tumulosa* have spatulate, yellow petals 5 to 7 mm (0.2 to 0.3 in) long. The fruit is an ovoid silicle about 3 mm (0.1 in) long, and contains 2 to 4 seeds (Barneby 1966; Reveal 1970; Welsh and Reveal 1977; Welsh et al. 1987).

Lesquerella tumulosa grows on sparsely vegetated white shale knolls in thin, poorly developed soils that are derived from the Winsor member of the Carmel geologic formation (Welsh and Reveal 1977; Welsh 1978; Franklin 1990). Plant species commonly associated with *L. tumulosa* include: *Pinus edulis* (pinyon pine), *Juniperus osteosperma* (Utah juniper), *Purshia tridentata* (bitterbrush), *Cryptantha flava* (yellow cryptantha), *Stipa hymenoides* (Indian ricegrass), *Eriogonum corymbosum* (wild buckwheat), *Asclepias cryptoceras* (pallid milkweed), *Hymenopappus filifolius* (hyaline herb), and *Oenothera caespitosa* (morning-lily).

Lesquerella tumulosa is restricted to one population of about 20,000 plants that have a total range of about 4 km² (2.5 mi). It is only found in the Kodachrome flats area of the Paria River drainage in northern Kane County, south-central Utah (Franklin 1990). The small population size of *L. tumulosa* and restricted habitat make the species vulnerable to human-caused and natural environmental disturbances. Some of its habitat has been destroyed by gravel aggregate removal (Welsh 1978), and an active gravel quarry is located on *L. tumulosa* habitat. Off-road vehicle use, mineral exploration, and mining claim assessment work also are threats to the habitat of this species.

Lesquerella tumulosa occurs only on public lands owned and managed by the State of Utah and the Bureau of Land Management. Most plants (90 percent) of this species occur on a single section of State land.

Section 12 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et. seq.*), directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Fish and Wildlife Service (Service) published a notice in the Federal Register (40 FR 27823) of its acceptance of the report as a petition to list the taxa named therein under section 4(c)(2) of the Act (petition acceptance is now

governed by section 4(b)(3)(A) of the Act), and its intention to review the status of those plants.

Lesquerella tumulosa was proposed by the Service for listing as endangered along with some 1,700 other vascular plant taxa on June 16, 1976 (41 FR 24523). General comments received in relation to the 1976 proposal were summarized and published on April 26, 1978 (43 FR 17909). The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn, though proposals published before the date of enactment of the 1978 amendments could not be withdrawn before the end of a 1-year grace period beginning on the date of enactment. On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had not been made final (44 FR 70796). That proposal included *L. tumulosa*.

The July 1975 notice was updated by a December 15, 1980, notice (45 FR 82480) which included *L. tumulosa* as a category 1 species. Category 1 comprises taxa for which the Service has significant biological information to support proposing them for listing as endangered or threatened species.

The Service published a Notice of Review on September 27, 1985 (50 FR 39526), replacing the 1980 Notice of Review and the 1983 supplement. This Notice of Review reclassified *L. tumulosa* from category 1 to category 2, because the Service received a status survey report which indicated that the population of *L. tumulosa* was much larger than previously reported (Hreha 1982). The Service deemed it prudent at that time to further review the status of *L. tumulosa* before proposing to list the species as either endangered or threatened. On February 21, 1990, the Service published a new Notice of Review (55 FR 6184) replacing the previous notices. This notice maintained *L. tumulosa* in category 2. In 1991, the Service received significant additional information based on extensive field work (Franklin 1990) that indicated *L. tumulosa* should be listed as endangered.

Section 4(b)(3)(B) of the 1982 amendments to the Act requires the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) amendments further require that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The 1975 Smithsonian report was accepted as a petition, and the plant taxa in the Service's 1980 and 1985 notices are treated as though they are petitioned.

Beginning on October 13, 1983, and each successive year, the Service has made 1-year findings that the petition to list *L. tumulosa* was warranted but precluded by other listing actions of higher priority. The Service published a proposed rule on November 3, 1992 (57 FR 49671), proposing endangered status for this species. That proposal constituted the final 1-year finding for *L. tumulosa*.

Summary of Comments and Recommendations

In the November 3, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices concerning this proposed action were published in The Salt Lake Tribune, the Deseret News, and the Southern Utah News requesting public comments.

Seven comments were received during the comment period of November 3, 1992, through January 4, 1993. Six comments generally supported the proposed listing of *L. tumulosa* as endangered. One commenter opposed the proposal but provided no substantive rationale. One commenter stated that a recent survey (Welsh and Thorne 1992) had identified additional populations of this species and that the new information should be considered prior to a final decision on the listing. The survey referenced addressed several plant species, but it did not address *L. tumulosa*.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lesquerella tumulosa* (Barneby) Reveal are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Recent inventories of this species have documented a single, small population with a limited range (Franklin 1990). The population is on State and Federal lands and is vulnerable to surface disturbance associated with industrial

development within its habitat (Welsh 1978). An active gravel quarry is present on the habitat of this species, and the remainder is subject to leasing for oil and gas mining. Portions of the habitat have been destroyed by prospecting and excavating gravel and clay.

Lesquerella tumulosa also is vulnerable to off-road vehicles. A new paved road constructed in 1991-1992 provides increased access to the remaining plants, and road travel has increased since its construction. Service biologists estimate that off-road vehicle traffic will increase by about 50 percent in the next decade because of the ease of access afforded by this new paved road.

B. Overutilization for commercial, recreational, scientific, or educational purposes. None known. However, its limited distribution makes *L. tumulosa* vulnerable to vandalism.

C. Disease or predation. Sheep and cattle grazing may have adversely impacted *L. tumulosa* populations. However, the current level of grazing by domestic livestock, if maintained, is not expected to significantly impact the species.

D. The inadequacy of existing regulatory mechanisms. There are no Federal, State, or local laws or regulations that address this species specifically or that directly provide for the protection of its habitat. The Bureau of Land Management is aware of *L. tumulosa* and is considering it in environmental planning of its habitat area until the Service makes a final determination concerning its status under the Act. No Federal agencies are under current legal obligation for the conservation of *L. tumulosa*.

About 90 percent of the remaining plants are located on State land. The Utah State Land Board is authorized, by State law, to provide conservation planning for federally listed endangered and threatened plant species, but no such recognition is granted to nonlisted species. Most of the *L. tumulosa* population is on one section of land owned by the State of Utah.

E. Other natural or manmade factors affecting their continued existence. The total population of *L. tumulosa* is about 20,000 individuals (Franklin 1990). The population of this species is at a level which may not be demographically stable in the long-term. The existence of only one population for this species makes it particularly vulnerable to extinction from any catastrophic event. The effects of past habitat degradation on the species are unknown but may already affect its future existence.

The Service has carefully assessed the best scientific and commercial

information available regarding the past, present, and future threats faced by *L. tumulosa* in determining to make this rule final. Based on this evaluation, the preferred action is to list *Lesquerella tumulosa* as an endangered species. This species is a rare local endemic plant. Its limited habitat is being exploited for mineral extraction and other development activities. It has sustained damage by off-road vehicles, and this damage is increasing. The population size of this species is small and its range is limited. It is vulnerable to environmental disturbances which, when combined with other impacts, may result in population extinction. A status of "threatened" would not be appropriate because threatened does not reflect the present biological condition and vulnerability of this species. A listing as threatened would only indicate that an endangered status would be likely within the foreseeable future. For the reasons given below, it is not considered prudent to designate critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat for *L. tumulosa* is not prudent for this species at this time because possible adverse consequences from vandalism would likely outweigh the minimal benefits accruing from critical habitat designation.

As noted under Factor "A," *L. tumulosa* occupies extremely limited habitat. Designation of critical habitat would result in publication of a detailed description and map of this habitat in the Federal Register, exposing the species to the potential and probable threat of collection and vandalism. Lacking mobility, plants are more vulnerable to vandalism than animals. One person could easily vandalize the single small *L. tumulosa* population. Moreover, few additional benefits would be provided to the species by the critical habitat designation that would not already be provided by listing the species as endangered. Any Federal action that would impact the plant's habitat would be addressed through Section 7 consultation. Section 9(a)(2)(B) of the Act makes it unlawful to remove and reduce to possession any endangered species of plant from areas under Federal jurisdiction or to maliciously damage or destroy such species on any such area. These provisions are difficult to enforce,

however, and publication of critical habitat descriptions and maps would only increase the species' vulnerability. The Bureau of Land Management is aware of the occurrence of *L. tumulosa* on Federal lands and of their obligations under the Act.

The Utah Natural Heritage Program of the Department of Natural Resources is similarly aware of the location of this species on State of Utah lands. Listing the plant as federally endangered would ensure its consideration in planning conducted by the State of Utah. Protection of habitat also would be accomplished through the recovery process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service after listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

A significant portion of the known population of *L. tumulosa* is on Federal lands under the jurisdiction of the Bureau of Land Management. The Bureau of Land Management, in addition, is responsible for the leasing of minerals under Federal jurisdiction. Federal agencies are responsible for ensuring that Federal land uses and

actions are not likely to jeopardize the continued existence of *L. tumulosa*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued for *L. tumulosa* because the species is not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 North

Fairfax Drive, Arlington, Virginia 22203 (703/358-2104).

National Environmental Policy Act

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

References Cited

Barneby, R.C. 1966. New sorts of *Lesquerella*, *Euphorbia*, and *Viguiera* from Kane County, Utah. Leaflets of Western Botany. 10:313-317.

Franklin, M.C. 1990. Report for 1989 challenge cost share project USDI Bureau of Land Management, target species: *Xylorhiza cronquistii* (Cronquist woodyaster), *Lesquerella tumulosa* (Kodachrome bladderpod), *Lepidium montanum* var. *stellae* (Kodachrome pepper-grass). Utah Natural Heritage Program, Salt Lake City. 11 pp.

Hreha, A.M. 1982. Status report on *Lesquerella tumulosa* (Barneby) Reveal. Prepared for U.S. Fish and Wildlife Service. Meiji Resource Consultants, Layton, Utah. 21 pp.

Reveal, J.L. 1970. Comments on *Lesquerella hitchcockii*. Great Basin Naturalist 30:94-98

Rollins, R.C. and E.A. Shaw. 1973. The genus *Lesquerella* in North America. Harvard University Press, Cambridge, Massachusetts. 288 pp.

Welsh, S.L. 1978. Status report: *Lesquerella tumulosa*. U.S. Fish and Wildlife Service, Denver, Colorado. 6 pp.

Welsh, S.L. and J.L. Reveal. 1977. Utah Flora: Brassicaceae (Cruciferae). Great Basin Naturalist 37:279-365.

Welsh, S.L. and K.H. Thorne. 1992. Report of Bureau of Land Management Sensitive Plant Species, Western Kane County, Utah. Unpublished report prepared for the Bureau of Land Management, Salt Lake City, Utah. iv + 56 pp.

Welsh S.L., N.D. Atwood, S. Goodrich, and L.C. Higgins. 1987. A Utah Flora. Great Basin Naturalist Memoirs 9:1-894.

Author

The primary author of this proposed rule is John L. England, U.S. Fish and Wildlife Service, Salt Lake City, Utah (801/975-3630; see ADDRESSES above). Harold M. Tyus, Denver Regional Office, Denver, Colorado (303/236-7398) served as editor.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended 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; Public Law 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Brassicaceae, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.
 * * * * *
 (h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Brassicaceae—Mustard family:						
<i>Lesquerella tumulosa</i>	Kodachrome bladderpod	U.S.A. (UT)	E	519	NA	NA

Dated: September 23, 1993.

Bruce Blanchard,
Acting Director, Fish and Wildlife Service.

[FR Doc. 93-24383 Filed 10-5-93; 8:45 am]
BILLING CODE 4310-55-P

50 CFR Part 17

Endangered and threatened wildlife and plants; determination of experimental population status for an introduced population of red wolves in North Carolina and Tennessee

CFR Correction

In title 50 of the Code of Federal Regulations, parts 0 to 199, revised as of October 1, 1992, make the following corrections:

On page 170 in § 17.84, paragraphs (c)(1), (c)(4), (c)(5)(iii), (c)(6), (c)(9), (c)(10), and (c)(11) should be revised, and paragraph (c)(5)(iv) should be added to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(c) * * *

(1) The red wolf populations identified in paragraphs (c)(9)(i) and (c)(9)(ii) of this section are nonessential experimental populations.

* * * * *

(4)(i) Any person may take red wolves found in the area defined in paragraph (c)(9)(i) of this section in defense of that person's own life or the lives of others, *Provided* That such taking shall be immediately reported to the refuge manager, as noted in paragraph (c)(6) of this section.

(ii) Any person may take red wolves found in the area defined in paragraph (c)(9)(ii) of this section, *Provided* That such taking is incidental to lawful recreational activities or in defense of that person's own life or the lives of others, and that such taking is reported immediately to the Park Superintendent.

(iii) Any livestock owner may harass red wolves found in the area defined in paragraph (c)(9)(ii) of this section actually pursuing or killing livestock on private properties, *Provided* That all such harassment is by methods that are not lethal or physically injurious to the red wolf and is reported immediately to the Park Superintendent.

(iv) Any livestock owner may take red wolves found in the area defined in paragraph (c)(9)(ii) of this section to protect livestock actually pursued or being killed on private properties after

efforts to capture depredating red wolves by project personnel have proven unsuccessful, *Provided* That all such taking shall be immediately reported to the Park Superintendent.

(5) * * *

(iii) Take an animal that constitutes a demonstrable but non-immediate threat to human safety or that is responsible for depredations to lawfully present domestic animals or other personal property, if it has not been possible to otherwise eliminate such depredation or loss of personal property, *Provided* That such taking must be done in a humane manner, and may involve killing or injuring the animal only if it has not been possible to eliminate such threat by live capturing and releasing the specimen unharmed on the refuge or Park;

(iv) Move an animal for genetic purposes.

(6) Any taking pursuant to paragraphs (c) (3) through (5) of this section must be immediately reported to either the Refuge Manager, Alligator River National Wildlife Refuge, Manteo, North Carolina, telephone 919/473-1131, or the Superintendent, Great Smoky Mountains National Park, Gatlinburg, Tennessee, telephone 615/436-1294. Either of these persons will determine disposition of any live or dead specimens.

* * * * *

(9)(i) The Alligator River National Wildlife Refuge reintroduction site is within the historic range of the species in North Carolina, in Dare and Tyrrell Counties; because of their proximity, Beaufort, Hyde, and Washington Counties are also included in the experimental population designation.

(ii) The red wolf also historically occurred on lands that now comprise the Great Smoky Mountains National Park. The Park encompasses properties within Haywood and Swain Counties in North Carolina, and Blount, Cocke, and Sevier Counties in Tennessee. Graham, Jackson, and Madison Counties in North Carolina, and Monroe County in Tennessee, are also included in the experimental designation because of the close proximity of these counties to the Park boundary.

(iii) Except for the three island propagation projects and these small reintroduced populations, the red wolf is extirpated from the wild. Therefore, there are no other extant populations with which the refuge or Park experimental populations could come into contact.

(10) The reintroduced populations will be monitored closely for the duration of the project, generally by use

of radio telemetry as appropriate. All animals will be vaccinated against diseases prevalent in canids prior to release. Any animal that is determined to be sick, injured, or otherwise in need of special care, or that moves off Federal lands, will be immediately recaptured by Service and/or Park Service and/or designated State wildlife agency personnel and given appropriate care. Such animals will be released back to the wild on the refuge or Park as soon as possible, unless physical or behavioral problems make it necessary to return the animals to a captive-breeding facility.

(11) The status of the Alligator River National Wildlife Refuge project will be reevaluated by October 1, 1992, to determine future management status and needs. This review will take into account the reproductive success of the mated pairs, movement patterns of individual animals, food habits, and overall health of the population. The duration of the first phase of the Park project is estimated to be 10 to 12 months. After that period, an assessment of the reintroduction potential of the Park for red wolves will be made. If a second phase of reintroduction is attempted, the duration of that phase will be better defined during the assessment. However, it is presently thought that a second phase would last for 3 years, after which time the red wolf would be treated as a resident species within the Park. Throughout these periods, the experimental and nonessential designation of the animals will remain in effect.

* * * * *

BILLING CODE 1505-01-0

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 921253-2353; ID. 092993E]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces an increase in vessel trip limits for bocaccio, a component of the Sebastes complex of rockfish in the groundfish fishery off Oregon and California. This action is authorized under the Pacific Coast

Groundfish Fishery Management Plan (FMP). The increase is designed to keep the catch as close as possible to the 1993 harvest guideline while providing fishermen the opportunity to fully utilize the entire harvest guideline.

DATES: Effective from 0001 hours (local time) October 6, 1993, until modified, superseded, or rescinded. Comments will be accepted through October 21, 1993.

ADDRESSES: Submit comments to Rolland A. Schmitt, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN-C15700, Seattle, Washington 98115-0070; or Dr. Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd, suite 4200, Long Beach, California 90802-4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140; or Rodney McInnis at 310-980-4040.

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations (56 FR 736, January 8, 1991) provide for rapid changes to specific management measures that have been designated "routine." Trip landing and frequency limits for the Sebastes complex are among those management measures that have been designated as routine at 50 CFR 663.23(c)(1)(B). Implementation and further adjustment of those measures may occur after consideration at a single Pacific Fishery Management Council (Council) meeting. A cumulative trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time, without a limit on the number of landings or trips.

Effective January 1, 1993, no more than 50,000 pounds (22,680 kilograms (kg)) cumulative of the Sebastes complex could be taken and retained, possessed or landed per vessel in a 2-week period coastwide. Of this 50,000 pounds (22,680 kg), no more than 10,000 pounds (4,536 kg) cumulative could be bocaccio taken and retained south of Cape Mendocino, California (40° 30' 00" N. latitude).

Under the current trip limit only 671 metric tons (mt) of bocaccio have been landed through August 14, 1993. At the current catch rate, only 88 percent of the 1,540 mt harvest guideline is projected to be taken in 1993. Consequently, at its September meeting, the Council recommended that the 10,000-pound (4,536 kg) cumulative trip limit for bocaccio be increased to 15,000 pounds (6,804 kg) cumulative per 2-week period on October 6, 1993, the beginning of the next 2-week period. The increase is designed to keep the catch as close as

possible to the 1993 harvest guideline while providing fishermen the opportunity to fully utilize the entire harvest guideline. The RD concurred with the Council's recommendation. All other provisions for bocaccio and the Sebastes complex announced at 58 FR 2990 (January 7, 1993) remain in effect, including the trip limit for the Sebastes complex which is repeated below. This action does not change the trip limit for yellowtail rockfish which also is a component of the Sebastes complex.

Secretarial Action

The Secretary of Commerce (Secretary) concurs with the Council's recommendation and announces the following change to the management measures for bocaccio announced at 58 FR 2990 (January 7, 1993):

Coastwide, no more than 50,000 pounds (22,380 kg) cumulative of the Sebastes complex may be taken and retained, possessed, or landed per vessel in a 2-week period. Of this 50,000 pounds (22,680 kg), no more than 15,000 pounds (6,804 kg) cumulative of bocaccio may be taken and retained south of Cape Mendocino, California.

Classification

The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see ADDRESSES) during business hours until October 20, 1993.

This action is taken under the authority of 50 CFR 663.23(c)(1)(i)(B), and section III.C.1. of the Appendix to 50 CFR part 663.

This action is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, and Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 1993.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, and National Marine Fisheries Service.

[FR Doc. 93-24550 Filed 10-5-93; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 921107-3068; I.D. 092993A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in statistical area 61 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 3, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the 1993 pollock TAC for statistical area 61 is established by the final 1993 initial specifications (58 FR 16787, March 31, 1993) as 24,087 metric tons (mt). The fourth quarterly allowance of that TAC for statistical area 61 becomes available at noon, October 1, 1993.

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1993 pollock TAC in statistical area 61 soon will be reached. The Regional Director established a directed fishing allowance of 23,587 mt, and has set aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in statistical area 61 is prohibited, effective from 12 noon, A.l.t., October 3, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under § 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 30, 1993.

David S. Crestin,

Acting Director, Office of Fisheries
Conservation and Management, National
Marine Fisheries Service.

[FR Doc. 93-24492 Filed 10-1-93; 8:46 am]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 921185; I.D 093093B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries
Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA),
Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by the inshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the allowance of the total allowable catch (TAC) of pollock for the inshore component in the BS.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 3, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT:

Andrew N. Smoker, Resource
Management Specialist, Fisheries
Management Division, NMFS, 907-586-
7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(2), the final 1993 initial specifications for groundfish in the BSAI (58 FR 8703, February 17, 1993), and a subsequent reserve release (58 FR 44136, August 19, 1993), established the allowance of pollock TAC for vessels catching pollock for processing by the inshore component in the BS as 420,875 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the allowance of pollock TAC for the inshore component

in the BS soon will be reached.

Therefore, the Regional Director has established a directed fishing allowance of 415,875 mt, with 5,000 mt to be taken as incidental catch in directed fishing for other species in the BS.

Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the BS, effective from 12 noon A.l.t., October 3, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and complies with E.O. 12291.

List of Subjects in 50 CFR 675

Fisheries, Reporting and
recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation
and Management, National Marine Fisheries
Service.

[FR Doc. 93-24543 Filed 10-1-93; 3:37 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 58, No. 192

Wednesday, October 6, 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 73

RIN 3150-AD30

Annual Physical Fitness Performance Testing for Tactical Response Team Members, Armed Response Personnel, and Guards at Category I Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for Tactical Response Team members, armed response personnel, and guards at fuel cycle facilities possessing formula quantities of strategic special nuclear material (Category I licensees). This action is necessary to ensure that these personnel are able to perform their assigned duties under conditions of strenuous tactical engagements. Tactical Response Team members, armed response personnel, and guards at these facilities would be required to participate in a continuing physical fitness program and, according to new criteria, pass an annual performance test. As an alternative to the fitness program and the performance test previously proposed, the licensee will be permitted to develop a content-based site specific test, to be administered quarterly, and to justify that this test duplicates the response duties that are expected of Tactical Response Team members, armed response personnel, and guards in the event of a strenuous tactical engagement.

DATES: The comment period expires on December 20, 1993. Comments received after this date will be considered if it is practical to do so, but assurance of consideration can be given only for comments received on or before this date.

ADDRESSES: Mail written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Copies of the regulatory analysis, the environmental assessment and finding of no significant impact, the Paperwork Reduction Act statement submitted to OMB, and any comments received will be available for examination and copying at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3634.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1988 (53 FR 45447), the Commission published final amendments to 10 CFR 73.46 that require a Category I licensee to establish and train Tactical Response Teams (TRT),¹ conduct periodic tactical exercises, and make available a force of guards² or armed response personnel³ to provide assistance to the TRT, as necessary.

At the time of the 1988 rulemaking, no need for specific physical fitness performance testing criteria was identified. However, observations of Category I licensee guard performance during a 1988 DOE Central Training Academy course prompted the NRC to examine, through the California State University at Hayward (CSUH), the physical fitness levels of Tactical Response Team members, armed response personnel, and guards at Category I licensees. CSUH found that of 77 subjects tested, 26 percent had a poor level of cardiovascular fitness and another 29 percent were below average.

¹ "Tactical Response Team" means the primary response force for each shift which can be identified by a distinctive item of uniform, armed with specified weapons, and whose other duties permit immediate response.

² "Guard" means a uniformed individual armed with a firearm whose primary duty is the protection of special nuclear material against theft, the protection of a plant against radiological sabotage, or both.

³ "Armed Response Personnel" means persons, not necessarily uniformed, whose primary duty in the event of attempted theft of special nuclear material or radiological sabotage shall be to respond, armed and equipped, to prevent or delay such actions.

Furthermore, 26 percent of the individuals tested were classified as obese because of high body fat levels. Overall, the CSUH test results indicated that a potentially significant number of guards may not have a sufficient cardiovascular reserve for a TRT response situation, particularly if they must exert themselves at a high intensity in order to reach the scene of an incident or their designated post during a critical situation. Therefore, the NRC concluded that criteria for physical fitness performance testing of TRT members, armed response personnel, and guards as well as the specification of a minimum continuing physical fitness training program are needed to ensure an adequate level of fitness. Accordingly, on December 13, 1991 (56 FR 65024), the Commission published proposed amendments to 10 CFR Part 73 that contained additional requirements relative to the physical fitness qualifications of Tactical Response Team members, armed response personnel, and guards. The Federal Register Notice also included the requirements for day firing qualification courses for those personnel. The Commission has decided to publish the day firing qualification requirements as a final rule and to republish the physical fitness-related requirements as a proposed rule as a result of the analysis of public comment (see Summary of Public Comments).

The amendments proposed in 1991 would have required TRT members, armed response personnel, and guards to participate in annual physical fitness performance testing and in a continuing physical fitness training program to ensure that the individuals achieve and maintain the required fitness level. Individuals would have been required to receive a physical examination by a licensed physician, and be provided with written certification that there are no medical contraindications to participation in the physical fitness training program or the annual performance testing, prior to participation in either program. In addition, the amendments proposed in 1991 would have required licensees to assess the general fitness of each participant every 4 months and to make modifications to the individual's training regime, as necessary.

In the amendments proposed in 1991, the minimum physical fitness training

program needed to achieve the necessary fitness levels was separated into two elements. The first element included the training of individuals through cardiovascular training activities such as running, bicycling, rowing, swimming, or cross-country skiing. Individuals would be tested prior to assignment as a TRT member and each year thereafter using the performance criteria of a 1-mile run in 8.5 minutes or less and a 40-yard dash starting from a prone position in 8.0 seconds or less. Likewise, individuals to be assigned as armed response personnel and guards would be required to participate in the physical fitness training program. However, the performance criteria for these individuals would be a ½ mile run in 4 minutes and 40 seconds or less and a 40-yard dash starting from a prone position in 8.5 seconds or less. The fitness levels required of TRT members, whose duties are to perform offensive combative tasks, have been established by a 1982 DOE study.⁴ The fitness levels required of armed response personnel and support guards, whose duties are to perform defensive combative tasks, were also established by the study.⁴

The second element of the physical fitness training program involved musculoskeletal training, i.e., exercises that develop strength, flexibility, and endurance in the major muscle groups. Although musculoskeletal training would be an integral part of the physical fitness training program, performance criteria were not specified because to date there have been no studies that establish the levels of strength, flexibility, and endurance required of TRT members, armed response personnel, and guards under conditions of strenuous tactical engagement. However, the effectiveness of the musculoskeletal training would be included in a licensee's assessment program and the results used to make appropriate modifications to an individual's training regime.

Two documents have been prepared which may be used by licensees in developing physical fitness training programs and by physicians responsible for the required medical examinations of personnel participating in the programs. The first, "Physical Fitness Training Reference Manual for Security Force Personnel at Fuel Cycle Facilities Possessing Formula Quantities of Strategic Special Nuclear Material,"

NUREG/CR-5690,⁵ provides information on designing and conducting a physical fitness training program. The second, "Medical Screening Reference Manual for Security Personnel at Category I Fuel Cycle Facilities Possessing Formula Quantities of Strategic Special Nuclear Material," NUREG/CR-5689, is intended for use by the examining physicians. These documents have been placed in the Public Document Room and are available for public inspection and copying.

Summary of Public Comments

The comment period for the proposed rule published December 13, 1991 (56 FR 65024) expired on March 13, 1992. Three letters of comment were received on the proposed requirements for both day firing qualifications and physical fitness programs. Since the requirements for day firing qualification are being published separately as a final rule, the comment summary below addresses only the comments on the proposed physical fitness training program and annual performance testing requirements. The comments and their resolution, as incorporated in this proposed rule, are as follows:

1. *Comment.* One commenter stated that the Commission has not adequately established the need for the continuing physical fitness training program and the annual performance testing.

Response. The Commission disagrees with this comment and reiterates that observations of licensee guard performance at Central Training Academy exercises alerted the NRC to the fact that guards may not be physically fit to perform their response duties in spite of the existing requirement that they "shall have no physical weakness or abnormality that would adversely affect their performance of assigned security job duties." Based upon the unacceptable consequences of the failure to adequately respond to security related emergencies, the Commission believes that criteria, which objectively determine that Tactical Response Team members, armed response personnel, and guards have an adequate level of physical fitness to perform their duties, as well as a physical fitness training program are needed.

⁵ Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

As a result of this comment, however, the Commission reexamined its position as to whether or not other alternatives existed that provide the same level of assurance that Tactical Response Team members, armed response personnel, and guards could adequately perform their assigned duties. The Commission has decided that an acceptable alternative to the approach specified in proposed 10 CFR 73.46(b) (10) and (11) would be for licensees to develop site-specific content-based physical fitness performance tests for NRC approval. The site-specific tests would duplicate the response duties a guard may need to perform during strenuous tactical engagements. These tests would be administered on a quarterly basis and would be used for qualifying Tactical Response Team members, armed response personnel, and guards. Therefore, a new proposed paragraph, 10 CFR 73.46(b) (12), has been added to allow this type of test instead of the physical fitness training program and annual performance tests specified in proposed 10 CFR 73.46(b) (10) and (11).

2. *Comment.* One commenter stated, without providing any rationale, that the aerobic exercise requirement seems excessive and therefore either the frequency or intensity of the training sessions required in 10 CFR 73.46(b)(10)(i)(A) should be reduced.

Response. The Commission disagrees with the commenter's contention. The proposed rule specifies that the aerobic portion of the physical fitness training sessions be at least 20 minutes in duration at 75 percent of maximum heart rate three times per week. The physical fitness training program is designed to follow the recommendations of the American College of Sports Medicine to achieve a level of fitness that helps Tactical Response Team members, armed response personnel, and guards maintain the requisite physical fitness for effective job performance and enables them to pass the applicable annual physical fitness performance tests. Therefore, neither the intensity nor the frequency of the aerobic requirement has been modified.

3. *Comment.* One commenter stated that individuals that served in "static response positions," such as operators of central or secondary alarm stations, or guards at exit and entry portals, should be exempted from the performance testing criteria because the rule states that the exercise program must be consistent with the environment in which individuals must perform their duties.

Response. The Commission agrees that individuals whose assignments do

⁴ Telfair, W.D., et al., United States Department of Energy Physical Standards Validation Study, Professional Management Associates, Inc., September 30, 1982.

not include strenuous response duties should not be required to participate in the physical fitness training program or annual performance testing. Therefore, the proposed rule has been modified to include an exemption for these employees, provided that these individuals are not assigned temporary response guard duties.

4. *Comment.* One commenter recommended, without providing any rationale, that different training regimes be specified for each type of position (i.e., TRT member, armed response person, and guard).

Response. The Commission did not specify a training regime to be followed by participants in the continuing physical fitness training program. The proposed rule provides the elements that must be part of the program in 10 CFR 73.46(b)(10)(i). The program must have elements devoted to aerobics and to the strength, flexibility, and endurance of large muscle groups. The Commission expects its licensee to develop, and modify as necessary, a training regime for each participant, depending upon a number of factors. These factors may include fitness level, recent medical history, and security responsibilities. The Commission believes that the language of this provision is sufficiently flexible to allow different training regimes for each type of position as well as for different individuals within each position. In fact, the text of 10 CFR 73.46(b)(10)(ii) included in this proposed rule states that "Individual exercise programs must be modified to be consistent with the needs of each participating Tactical Response Team member, armed response person, and guard, and consistent with the environments in which they must be prepared to perform their duties."

5. *Comment.* One commenter stated that the proposed requirement in 10 CFR 73.46(b)(10)(ii) for a fitness assessment every 4 months should be modified to read "assessments three times each year" to allow for individuals who are on vacation, sick leave; etc., when the 4 months elapse.

Response. The Commission believes that this is a valid concern. However, the modification as suggested by the commenter is vague and may result in an abuse of the rule. For example, a licensee could perform assessments once every week for 3 successive weeks then none for over 11 months and still be in compliance with the recommended modification. Therefore, the following sentence has been added to 10 CFR 73.46(b)(10)(ii) in the revised rule: "Individuals who exceed 4 months without being assessed for general

fitness, due to excused time off from work, must be assessed within 15 calendar days of returning to duty as a response guard."

6. *Comment.* One commenter stated that neither the method for performing the assessment required in 10 CFR 73.46(b)(10)(ii), nor any criterion for determining the acceptability of the results of the assessment, is specified. With regard to the methods used, this commenter questioned the requirement for a physical assessment by "medical personnel" and suggested that a questionnaire-type documentation of an individual's recent medical history and fitness-related activities may be sufficient. This commenter stated that frequent medical evaluations would be unnecessarily repetitive.

Response. In regard to the commenter's question on the methods used for the trimester assessments, the proposed rule would not require a "physical assessment by medical personnel." What would be required is a recent health history, measures of cardiovascular fitness, percent of body fat, flexibility, muscular strength, and endurance. Specific measures are not required so that licensees have the flexibility to develop their own programs. The Commission believes that the trimester assessments are important because they will identify deficiencies in individual training regimes and provide a timely mechanism for modification. Concerning the commenter's assertion that no criteria are provided for the acceptability of the assessment results, it should be noted that neither the existence nor absence of acceptance criteria relieves the licensee from the responsibility to assess the effectiveness of his program and make any necessary modifications to individual training regimes. It will be up to each licensee to determine how its fitness staff will evaluate the needs of the program participants.

7. *Comment.* One commenter stated that the requirement, in proposed § 73.46(b)(10)(ii), for an assessment to determine the effectiveness of the continuing physical fitness training program implies the existence of some acceptance criteria and corrective actions. The commenter further stated that the requirement should be deleted, because no criteria or corrective actions have been provided. Barring sudden changes in an individual's medical status, the annual physical examination should be sufficient to ensure the capability of Tactical Response Team members, armed response personnel, and guards to perform their duties.

Response. As noted in the previous response, it is the licensees

responsibility to determine how the trimester assessments will be conducted. Corrective actions for individuals whose fitness level is deemed to be unacceptable will vary depending upon the individual and the degree to which physical fitness has degenerated. These measures might include reclassifying the individual from a minimally supervised regime to a directly supervised or individually monitored regime. In other cases, the training regime itself might be modified to address specific deficiencies discovered. In any event, the corrective action taken is also the responsibility of the licensee, who should rely upon a qualified program director to plan the action and obtain the appropriate medical advice when necessary. With respect to the comment that the yearly physical examination is sufficient to ensure that the continuing physical fitness program has been effective, it should be noted that the yearly physical examination serves a different purpose and is not relied upon to assess the adequacy of the program. The purpose of the annual physical examination is to assure that Tactical Response Team members, armed response personnel, and guards are healthy enough to participate in the continuing physical fitness training program and to be tested against the performance criteria without undue hazard to themselves.

8. *Comment.* One commenter stated that the amount of time allowed for implementation should be increased from 180 days to 1 year.

Response. The Commission believes that a 1-year implementation period is reasonable because licensees may need to purchase or lease facilities or equipment, or acquire qualified personnel to administer their programs. Therefore, this proposed rule has been amended to incorporate this comment.

9. *Comment.* One commenter stated that the costs of a supervised or monitored physical fitness training program are excessive and unwarranted because the improvement in security guard performance is not quantifiable.

Response. The physical fitness performance criteria were developed as a result of the DOE Physical Standards Validation Study. The fitness levels required of Tactical Response Team members, armed response personnel, and guards, whose duties are to perform defensive combative tasks and offensive combative tasks, were established by the 1982 DOE study. The Commission specifies the elements that should be part of the physical fitness training program and not the program itself. These elements when taken together are considered the minimum required to

allow Tactical Response Team members, armed response personnel, and guards to achieve and maintain the fitness level required to successfully perform the physical fitness performance test each year and are necessary to ensure that Tactical Response Team members, armed response personnel, and guards can perform their response duties. The costs associated with implementing the elements can vary depending upon how the licensee designs the program. The Commission believes that this program is needed to ensure that Tactical Response Team members, armed response personnel, and guards at Category I licensees are sufficiently fit to perform their assigned duties under conditions of strenuous tactical engagement. Also, to allow licensees to better control their costs, the proposed rule contains a new paragraph, 10 CFR 73.46(b)(12), which allows licensees to have quarterly site specific content-based performance tests instead of a formal physical fitness training program and annual performance tests. Quarterly testing has the advantage of reducing the possibility of degradation of a individual's fitness level as compared to annual qualification tests. Therefore, no further modifications have been made in the rule.

10. *Comment.* One commenter recommended that licensee responsibility be limited to validating that their personnel meet or exceed the physical fitness performance testing criteria, but not be required to provide a training program.

Response. Under an alternative proposed in 10 CFR 73.46(b)(12) a licensee would not be required to have a physical fitness training program, provided Tactical Response Team members, armed response personnel, and guards pass site specific content-based physical fitness performance tests. However, licensees may still wish to provide a training program to ensure that their personnel are fit enough to undergo the qualification testing.

11. *Comment.* One commenter questioned why the requirement for a medical examination 30 days prior to performance testing, which was previously in appendix B to part 73 and deleted in 1988, was restored in this rule. The commenter does not state whether or not the requirement should be modified or deleted.

Response. Previous requirements for timing of physical examinations are unrelated to the proposed 10 CFR 73.46(b)(11)(iii), which states that each guard undergo a physical examination within 30 days of participating in the physical fitness performance testing. The underlying issue of this

requirement is the well-being of the individual being tested. The Commission believes that it is prudent to obtain a minimum level of assurance that an individual has no medical contraindications to physical fitness performance testing which may require a maximum effort on the part of the individual being tested. The 30-day limit is a common industry practice and is equivalent to the requirement in 10 CFR part 1046 which applies to DOE security personnel.

Criminal Penalties

The Commission notes that these amendments are issued under sections 161 b and i of the Atomic Energy Act of 1954, as amended. Therefore, violation of these regulations may subject a person to criminal sanctions under section 223 of the Atomic Energy Act.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, will not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The proposed rule will not adversely affect either the safety of the operations carried out by licensees possessing formula quantities of strategic special nuclear material nor the routine release of, or exposure to, radioactivity. These amendments would specify (1) annual performance testing criteria and a minimum physical fitness training program or (2) a quarterly administered site specific content-based physical fitness performance test to assure that Tactical Response Team members, armed response personnel, and guards can adequately perform their duties under conditions of strenuous tactical engagement.

The environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mr. Harry Tovmassian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-3634.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that

are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average 41 hours per licensee respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0002), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this proposed amendment. The analysis examines the costs and benefits of the alternatives considered by the Commission and provides a decision rationale for the chosen approach. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the regulatory analysis may be obtained from Ms. Carrie Brown, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504-2382.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rulemaking, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule would affect two Category I licensees. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR part 121. Thus, this rule does not fall within the purview of the act.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule because

these amendments do not impose requirements on existing 10 CFR part 50 licensees. Therefore, a backfit analysis is not required for this proposed rule.

List of Subjects in 10 CFR Part 73

Criminal penalties, Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the Commission is proposing to adopt the following amendments to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for 10 CFR part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

2. In § 73.46 paragraphs (b)(4) and paragraph (i) are revised and new paragraphs (b)(10), (b)(11), and (b)(12) are added to read as follows:

§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures.

* * * * *

(b) * * *
(4) The licensee may not permit an individual to act as a Tactical Response Team member, armed response person, or guard unless the individual has been trained, equipped, and qualified to perform each assigned security duty in accordance with appendix B of this part, "General Criteria for Security Personnel." Tactical Response Team members, armed response personnel, and guards shall be trained, equipped, and qualified for use of their assigned weapon in accordance with paragraphs (b)(6) and (b)(7) of this section. In addition, Tactical Response Team members, armed response personnel, and guards shall be trained and qualified in accordance with either paragraphs (b)(10) and (b)(11) or paragraph (b)(12) of this section. Upon the request of an authorized representative of the NRC, the licensee

shall demonstrate the ability of the physical security personnel, whether licensee or contractor employees, to carry out their assigned duties and responsibilities. Each Tactical Response Team member, armed response person, and guard, whether a licensee or contractor employee, shall requalify in accordance with appendix B of this part. Tactical Response Team members, armed response personnel, and guards shall also requalify in accordance with paragraph (b)(7) of this section at least once every 12 months. The licensee shall document the results of the qualification and requalification. The licensee shall retain the documentation of each qualification and requalification as a record for 3 years after each qualification and requalification.

* * * * *

(10) In addition to the medical examinations and physical fitness requirements of paragraph I.C of appendix B of this part, each Tactical Response Team member, armed response person, and guard, except as provided in paragraph (b)(10)(v) of this section, shall participate in a physical fitness training program on a continuing basis.

(i) The elements of the physical fitness training program must include, but not necessarily be limited to, the following:

(A) Training sessions of sufficient frequency, duration, and intensity to be of aerobic benefit, e.g., normally a frequency of three times per week, maintaining an intensity of approximately 75 percent of maximum heart rate for 20 minutes;

(B) Activities that use large muscle groups, that can be maintained continuously, and that are rhythmical and aerobic in nature, e.g., running, bicycling, rowing, swimming, or cross-country skiing; and

(C) Musculoskeletal training exercises that develop strength, flexibility, and endurance in the major muscle groups, e.g., legs, arms, and shoulders.

(ii) The licensee shall assess Tactical Response Team members, armed response personnel, and guards for general fitness once every 4 months to determine the effectiveness of the continuing physical fitness training program. Assessments must include a recent health history, measures of cardiovascular fitness, percent of body fat, flexibility, muscular strength, and endurance. Individual exercise programs must be modified to be consistent with the needs of each participating Tactical Response Team member, armed response person, and guard and consistent with the

environments in which they must be prepared to perform their duties. Individuals who exceed 4 months without being assessed for general fitness due to excused time off from work must be assessed within 15 calendar days of returning to duty as a Tactical Response Team member, armed response person, or guard.

(iii) Within 30 days prior to participation in the physical fitness training program, the licensee shall give Tactical Response Team members, armed response personnel, and guards a medical examination including a determination and written certification by a licensed physician that there are no medical contraindications, as disclosed by the medical examination, to participation in the physical fitness training program.

(iv) Licensees may temporarily waive an individual's participation in the physical fitness training program on the advice of the licensee's examining physician, during which time the individual may not be assigned duties as a Tactical Response Team member.

(v) Guards whose duties are to staff the central or secondary alarm station and those who control exit or entry portals are exempt from the physical fitness training program specified in paragraph (b)(10) of this section, provided that they are not assigned temporary response guard duties.

(11) In addition to the physical fitness demonstration contained in paragraph I.C of appendix B of this part, Tactical Response Team members, armed response personnel, and guards shall meet or exceed the requirements in paragraphs (b)(11)(i) through (b)(11)(v) of this section, except as provided in paragraph (b)(11)(vi) of this section, initially and at least once every 12 months thereafter.

(i) For Tactical Response Team members the criteria are a 1-mile run in 8 minutes and 30 seconds or less, and a 40-yard dash starting from a prone position in 8 seconds or less. For armed response personnel and guards that are not members of the Tactical Response Team the criteria are a one-half mile run in 4 minutes and 40 seconds or less and a 40-yard dash starting from a prone position in 8.5 seconds or less. The test may be taken in ordinary athletic attire under the supervision of licensee designated personnel. The licensee shall retain a record of each individual's performance for 3 years.

(ii) Incumbent Tactical Response Team members, armed response personnel, and guards shall meet or exceed the qualification criteria within 12 months of NRC approval of the licensee's revised Fixed Site Physical

Protection Plan. New employees hired after the approval date shall meet or exceed the qualification criteria prior to assignment as a Tactical Response Team member, armed response person, or guard.

(iii) Tactical Response Team members, armed response personnel, and guards shall be given a medical examination including a determination and written certification by a licensed physician that there are no medical contraindications, as disclosed by the medical examination, to participation in the physical fitness performance testing. The medical examination must be given within 30 days prior to the first administration of the physical fitness performance test, and on an annual basis thereafter.

(iv) The licensee shall place Tactical Response Team members, armed response persons, and guards, who do not meet or exceed the qualification criteria, in a monitored remedial physical fitness training program and relieve them of security duties until they satisfactorily meet or exceed the qualification criteria.

(v) Licensees may temporarily waive the annual performance testing for an individual on the advice of the licensee's examining physician, during which time the individual may not be assigned duties as a Tactical Response Team member.

(vi) Guards whose duties are to staff the central or secondary alarm station and those who control exit or entry portals are exempt from the annual performance testing specified in paragraph (b)(11) of this section, provided that they are not assigned temporary response guard duties.

(12) The licensee may elect to comply with the requirements of this paragraph instead of the requirements of paragraphs (b)(10) and (b)(11) of this section. In addition to the physical fitness qualifications of paragraph I.C of appendix B of this part, each licensee subject to the requirements of this section shall submit to the NRC for approval site-specific, content-based, physical fitness performance tests which will—when administered to each Tactical Response Team member, armed response person, or guard—duplicate the response duties these individuals may need to perform during a strenuous tactical engagement.

(i) The test must be administered to each Tactical Response Team member, armed response personnel, and guard once every 3 months. The test must specifically address the physical capabilities needed by armed response personnel during a strenuous tactical engagement at the licensed facility.

Individuals who exceed 3 months without having been administered the test due to excused time off from work must be tested within 15 calendar days of returning to duty as a Tactical Response Team member, armed response person, or guard.

(ii) Within 30 days prior to the first administration of the physical fitness performance test, and on an annual basis thereafter, Tactical Response Team members, armed response personnel, and guards shall be given a medical examination including a determination and written certification by a licensed physician that there are no medical contraindications, as disclosed by the medical examination, to participation in the physical fitness performance test.

(iii) Guards whose duties are to staff the central or secondary alarm station and those who control exit or entry portals are exempt from the performance test specified in paragraph (b)(12) of this section, provided that they are not assigned temporary response guard duties.

* * * * *

(i) *Implementation schedule for revisions to physical protection plans.*

(1) By [90 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] each licensee shall submit a revised Fixed Site Physical Protection Plan to the NRC for approval. The revised plan must describe how the licensee will comply with the requirements of paragraphs (b)(10) and (b)(11) of this section or the requirements of (b)(12) of this section. Revised plans must be mailed to the Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(2) Each licensee shall implement the approved plan pursuant to paragraphs (b)(10) and (b)(11) of this section or (b)(12) of this section within 1 year after NRC approval of the revised Fixed Site Physical Protection Plan.

Dated at Rockville, Maryland, this 30th day of September, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93-24502 Filed 10-5-93; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL ELECTION COMMISSION

[Notice 1993-23]

11 CFR Parts 100 and 113

Expenditures; Personal Use of Campaign Funds

AGENCY: Federal Election Commission.

ACTION: Extension of comment period and notice of hearing request.

SUMMARY: On August 30, 1993, the Federal Election Commission published a Notice of Proposed Rulemaking regarding the personal use of campaign funds. The Commission has decided to extend the comment period on these proposed rules to November 13, 1993. The Commission also invites persons who would be interested in testifying at a public hearing on the proposed rules to inform the Commission of their interest before the end of the comment period.

DATES: Comments and requests to testify must be received on or before November 13, 1993.

ADDRESSES: Comments and requests to testify must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: On August 30, 1993, the Federal Election Commission published a Notice of Proposed Rulemaking in the *Federal Register*. 58 FR 45463. The Notice sought comments on proposed rules governing the personal use of campaign funds. The comment period on these rules was originally scheduled to end on September 29, 1993.

The Commission has received two requests for an extension of the comment period. One request noted the difficulty of the issues involved in this rulemaking, and urged the Commission to extend the comment period to October 29, 1993. The other request suggested that many Members of Congress may have been unable to submit comments before the original deadline due to the press of legislative business, and asked for an additional 45 day comment period in order to give Members an additional opportunity to comment.

In order to give all interested parties ample opportunity to comment on the complicated issues involved in this rulemaking, the Commission is granting

the request for an additional 45 day comment period. The new deadline for comments on the Commission's Notice of Proposed Rulemaking on the personal use of campaign funds is November 13, 1993. Comments should be submitted on or before that date to the address limited above.

The Commission has also received a request to testify at a public hearing on the proposed rules. The Commission generally grants requests to hold hearings when enough persons express an interest in testifying at a hearing to make the hearing worthwhile. The Commission invites persons who would be interested in testifying at such a hearing to inform the Commission of their interest before the end of the comment period. Persons planning to submit written comments on the proposed rules should indicate their interest when they submit their written comments. Those who have already submitted comments should submit a letter indicating their interest by November 13, 1993.

Dated: September 30, 1993.

Scott E. Thomas,
Chairman, Federal Election Commission.
[FR Doc. 93-24507 Filed 10-5-93; 8:45 am]
BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-120-AD]

Airworthiness Directives; Airbus Industrie Model A310-200 and A310-300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to all Airbus Industrie Model A310-200 and A310-300 series airplanes, that currently requires inspections and tests to detect broken or missing vespel bushes in the flap universal joint assemblies, and replacement of universal joint bushes, if necessary. This action would add a terminating modification for the currently required inspections and tests. This proposal is prompted by the development of a modification that will improve the integrity of the flap universal joints. The actions specified by the proposed AD are intended to prevent rupture of the flap universal

joints, subsequent partial loss of lift in one wing, and reduced controllability of the airplane.

DATES: Comments must be received by December 1, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-120-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-120-AD." The

postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-120-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On July 22, 1991, the FAA issued AD 91-16-05, Amendment 39-7095 (56 FR 37462, August 7, 1991), applicable to all Airbus Industrie Model A310-200 and A310-300 series airplanes, to require repetitive visual inspections and electrical continuity tests to detect broken or missing vespel bushes in the flap universal joint assemblies, and replacement of universal joint bushes, if necessary. That action was prompted by reports of abnormal angular backlash found in some flap drive shaft-universal joint assemblies, due to loose, broken, or missing vespel bushes in the universal joint forkends. The requirements of that AD are intended to prevent rupture of the flap universal joints, subsequent partial loss of lift in one wing, and reduced controllability of the airplane.

Since the issuance of that AD, the manufacturer has developed a modification that will improve the integrity of the flap universal joints. This modification entails replacing the cylindrical vespel SP 21 bushes with flanged Rose Uniflon bushes, and replacing the pivot pins with chrome-plated, super-finished pins. Accomplishment of this modification will prevent rupture of the flap universal joints, which can lead to problems associated with the addressed unsafe condition. Its installation will eliminate the need for repetitive inspections and tests of the components.

Airbus Industrie has issued Service Bulletin A310-27-2059, dated March 1, 1993, that describes procedures for replacing the cylindrical vespel SP 21 bushes with flanged Rose Uniflon bushes, and replacing the pivot pins with chrome-plated, super-finished pins. (This service bulletin references Lucas/Liebherr Service Bulletin 551-27-M551-02, dated November 2, 1992, for additional service information.)

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

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, the proposed AD would supersede AD 91-16-05 to require modification of the flap universal joint assemblies. The installation of this modification would terminate the currently required repetitive visual inspections and electrical continuity tests of the flap universal joint assemblies. The modification would be required to be accomplished in accordance with the Airbus Industrie service bulletin described previously.

This proposed action is based on the FAA's determination that long-term continued operational safety will be better assured by actual modification of the flap universal joint assemblies to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

The FAA estimates that 25 airplanes of U.S. registry would be affected by this AD. It takes approximately 5 work hours per airplane to accomplish the inspection and tests currently required by AD 91-16-05, and the average labor cost is \$55 per work hour. Based on these figures, the total cost impact associated with the requirements of AD 91-16-05 on U.S. operators is estimated to be \$6,875, or \$275 per airplane, per inspection and testing cycle.

It is estimated that it would take approximately 47 work hours per airplane to accomplish the modification proposed in this new AD action, and that the average labor rate is \$55 per work hour. Required parts would cost approximately \$1,000 per airplane. Based on these figures, the total additional cost impact associated with the proposed AD on U.S. operators is estimated to be \$89,625, or \$3,585 per airplane.

The cost figures discussed above assume that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this

proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-7095 (56 FR 37462, August 7, 1991), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 93-NM-120-AD. Supersedes AD 91-16-05, Amendment 39-7095.

Applicability: All Models A310-200 and A310-300 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the flap universal joints, subsequent partial loss of lift in one wing, and reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 5,500 total landings, or within 350 hours time-in-service after September 11, 1991 (the effective date of AD 91-16-05, Amendment 39-7095), whichever occurs later, and thereafter at intervals not to exceed 3,500 landings, perform repetitive visual inspections and electrical continuity tests of the flap system universal joint assemblies, in accordance with Airbus Industrie Service Bulletin A310-27-2054, Revision 2, dated November 9, 1990.

(b) If any universal joint bushes are missing or broken, prior to further flight, replace the bushes with new bushes in accordance with Airbus Industrie Service Bulletin A310-27-2054, Revision 2, dated November 9, 1990. After replacement, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 3,500 landings.

(c) Within 3,500 landings after the effective date of this AD, modify the flap universal joint assemblies (Airbus Industrie Modification 10091D20285) in accordance with Airbus Industrie Service Bulletin A310-27-2059, dated March 1, 1993.

Accomplishment of this modification constitutes terminating action for the inspection and test requirements of this AD.

(d) Modification of the flap universal joint assemblies (Airbus Industrie Modification 10091D20285) in accordance with Airbus Industrie Service Bulletin A310-27-2059, dated March 1, 1993, constitutes terminating action for the inspection and test requirements of 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, 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.

(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.

Issued in Renton, Washington, on September 29, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-24394 Filed 10-5-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 103

[Docket No. 93N-0200]

Quality Standards for Foods With No Identity Standards; Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the quality standard for bottled water to require that bottled water be

free of coliform bacteria. This action is in response to a rulemaking by the Environmental Protection Agency (EPA) amending the National Primary Drinking Water Regulation (NPDWR) for coliform bacteria in public drinking water. FDA is also addressing other matters concerning the microbiological quality of bottled water and is requesting comments on whether the agency should establish quality standard regulations for other microorganisms that may be present in bottled water and may pose a health risk.

DATES: Written comments by December 6, 1993. The agency is proposing that any final rule that may issue based upon this proposal become effective 180 days after the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry S. Kim, Center for Food Safety and Applied Nutrition (HFS-306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4681.

SUPPLEMENTARY INFORMATION:

I. Background

EPA promulgates NPDWR's to protect the public from the adverse health effects of contaminants in public drinking water. In addition, at the time that it promulgates NPDWR's, EPA promulgates maximum contaminant level goals (MCLG's), which are health goals that are based solely on considerations of protecting the public from the adverse health effects of drinking water contamination.

NPDWR's, which are enforceable standards, consist of either a maximum contaminant level (MCL) or a treatment technique regulation for each contaminant. EPA sets MCL's for contaminants as close as feasible (with the use of the best technology or other means available, taking cost into consideration) to the MCLG, the level at which no known or anticipated adverse health effects occur and that provides an adequate margin of safety. When it is not feasible to establish an MCL for a specific contaminant, EPA can establish a treatment technique requirement for removal or reduction of that contaminant from drinking water to protect the public health from the adverse health effects of that contaminant.

In the **Federal Register** of June 29, 1989 (54 FR 27544), EPA published a final rule amending its NPDWR for

coliform bacteria. EPA revised the MCL for total coliform bacteria (total coliforms), including *Escherichia coli* (*E. coli*) and other fecal coliforms, in public drinking water. In addition, it established an MCLG of zero for total coliforms, including *E. coli* and other fecal coliforms. This rulemaking was based upon a proposal that EPA had published in the **Federal Register** of November 3, 1987 (52 FR 42224).

Section 410 of the Federal Food, Drug, and Cosmetic Act (the act (21 U.S.C. 349) requires that, whenever EPA prescribes interim or revised NPDWR's under section 1412 of the Public Health Service Act (The Safe Drinking Water Act (SDWA) (42 U.S.C. 300f through 300j-9)), FDA is to consult with EPA and within 180 days after the promulgation of such drinking water regulations " * * * either promulgate amendments to regulations under this chapter applicable to bottled drinking water or publish in the **Federal Register** * * * reasons for not making such amendments." FDA has consulted with EPA and is proposing to amend the quality standard for bottled water to require that bottled water be free of coliform bacteria.

II. EPA Standards

Under section 1412(b) of the SDWA, as amended in 1986, EPA was required to promulgate NPDWR's for 83 contaminants by June 19, 1989 (see 52 FR 42224 at 42225, November 3, 1987). A group of related bacteria known as "total coliforms" is one of the 83 contaminants that EPA was required to regulate.

A. MCLG for Total Coliforms

In its November 3, 1987, proposal (52 FR 42224 at 42226) to amend the NPDWR for coliform bacteria in drinking water, EPA stated that public health officials and professionals have used total coliforms for decades as the major criterion to assess the microbiological quality of drinking water. Coliform bacteria are usually present in water contaminated with human or animal feces and are often associated with outbreaks of diseases (Refs. 1 and 2). Moreover, according to EPA, although the presence of coliform bacteria in drinking water indicates that fecal pathogens may also be present, the detection of fecal coliform organisms, in particular *E. coli*, provides more definitive evidence of fecal pollution than the detection of total coliforms.

EPA noted in its November 3, 1987, proposal (54 FR 42224 at 42227) that the data in the available literature do not support a quantitative relationship between coliform densities and either

pathogen density or the potential for waterborne disease outbreaks. In its June 29, 1989, final rule (54 FR 27544 at 27548), EPA stated that it was not aware of any data in the literature that support a coliform density value below which there are no anticipated adverse health effects with an adequate margin of safety. EPA further stated that waterborne disease outbreaks and the presence of specific waterborne pathogens have been associated with coliform densities from less than 1 per 100 milliliters (mL) to very high levels. Therefore, to reduce fecal pathogens to minimal levels, EPA established an MCLG of zero for total coliforms in drinking water, including *E. coli* and other fecal coliforms.

B. MCL for Total Coliforms

1. Intent is to Lower Risk of Waterborne Disease Outbreaks

In its final rule of June 29, 1989 (54 FR 27544 at 27547), EPA concluded that despite existing drinking water regulations, the number of actual outbreaks and cases of waterborne disease was unacceptably high. For example, EPA noted that between 1971 and 1983, 427 outbreaks with over 100,000 cases of waterborne disease have been reported. However, because EPA believed that a large number of waterborne disease outbreaks and cases was not reported, it concluded that the actual number of outbreaks was much higher than the recorded number of outbreaks.

EPA, therefore, established several regulatory measures in its final rule of June 29, 1989 (54 FR 27544 at 27549), to further reduce the risk of waterborne illness. In addition to the revised MCL for total coliforms, it established monitoring requirements, including sanitary surveys for systems collecting fewer than 5 samples per month, State review of sample citing plans, testing for total coliforms in routine and repeat samples, and testing for either fecal coliforms or *E. coli* if a sample tests positive for total coliforms.

Furthermore, in a separate final rule that was also published in the **Federal Register** of June 29, 1989 (54 FR 27486), EPA established filtration and disinfection treatment requirements for systems using surface water sources and stated that it intended to adopt additional disinfection requirements for systems using ground water sources.

2. MCL Based on Presence-Absence of Coliforms

Before amending its NPDWR on June 29, 1989 (54 FR 27544), EPA based compliance for total coliforms in

drinking water on two MCL's (a single-sample MCL and a monthly average MCL) that specified a number of coliform bacteria detected in the sample, calculated as coliform density. The two MCL's varied according to the method used (Multiple Tube Fermentation (MTF) technique or Membrane Filter (MF) technique) and the sample volume (50 mL or 500 mL for MTF technique and 100 mL for MF technique). However, in its proposal of November 3, 1987 (52 FR 42224 at 42229), EPA stated that basing compliance with the MCL on a monthly average density calculation had been criticized because the variability of coliform counts greatly reduces the precision of this calculation (i.e., there is a large standard deviation). EPA further stated that basing compliance on the presence or absence of coliform bacteria rather than on coliform bacteria density would provide the following advantages: ease of detection; less influence of sample transit time; and greater mathematical precision in analytical findings because the calculation difficulties implicit in the statistical methodology of coliform density calculations would be eliminated. Therefore, under the amended NPDWR (54 FR 27544, June 29, 1989), EPA bases compliance with the MCL on the presence or absence of coliforms rather than on an estimate of coliform density.

In determining compliance with the revised MCL, EPA permits use of any one of the following four analytical methods: (1) The MTF technique, (2) the MF technique, (3) the Presence/Absence (P/A) Coliform test, and (4) the Minimal Media *ortho*-nitrophenyl- β -D-galactopyranoside, 4-methylumbelliferyl- β -D-glucuronide technique (Minimal Media ONPG-MUG technique), sometimes referred to as the Autoanalysis Colilert System. EPA recommends that, when the presence of heterotrophic bacteria in water samples interferes with the MTF technique, the MF technique, or the P/A Coliform test, water systems use the Minimal Media ONPG-MUG technique which is less prone to interference. In addition, EPA requires that a 100 mL standard sample volume be used, regardless of the method used for determining the presence or absence of coliforms in drinking water.

3. Interference by Heterotrophic Bacteria

In amending the NPDWR for coliform bacteria (54 FR 27544 at 27547, June 29, 1989), EPA acknowledged that the presence of heterotrophic bacteria, a broad class of microorganisms comprised of many innocuous bacteria

as well as virtually all pathogens, including opportunistic (secondary) pathogens, can interfere with total coliforms analyses. Therefore, the amended NPDWR requires that water systems invalidate any sample (unless coliform bacteria are detected) that exhibits evidence of interference when analyzing for total coliforms (e.g., a turbid culture in the absence of gas production using the MTF technique; a confluent growth or a colony number that is "too numerous to count" using the MF technique; or a turbid culture in the absence of an acid reaction using the P/A Coliform test). The amended NPDWR also requires that water systems collect another sample from the same location that the original sample was collected within 24 hours of being notified of the interference problem and have it be analyzed using an analytical method less prone to interference, e.g., the Minimal Media ONPG-MUG technique.

4. Size of System Determines Numbers of Positive Samples Permitted

EPA's amended NPDWR for total coliforms is designed to provide quality drinking water on a consistent basis. Thus the size of the population served by a particular water system determines the required number of monthly samples for total coliforms analysis. Furthermore, the required number of samples per month determines the maximum number or percentage of the required number of monthly samples that can be positive for the presence of coliform bacteria. Thus, for systems serving a population of 33,000 or less, for which less than 40 samples per month are required, no more than one sample can be positive for total coliforms. For systems serving a population greater than 33,000, for which 40 or more samples per month are required, no more than 5.0 percent of the samples can be positive for total coliforms.

In proposing to amend its NPDWR for total coliforms (52 FR 42224 at 42236, November 3, 1987), EPA recognized that some municipal systems have problems with the persistent presence of coliforms in the distribution system even after treatment with disinfectants. EPA noted that the protection of coliforms provided by slimes, encrustations, tubercles, and sediments associated with the piping may be a cause for this persistent coliform presence. However, EPA also noted that this problem apparently is not associated with fecal or pathogenic contamination or with waterborne disease. Furthermore, based on its statistical analysis, EPA stated that

when 95 percent of 60 water samples are coliform-negative, there is a 95 percent confidence level that the fraction of water with coliform is less than 10 percent. EPA believes that, at this level of confidence, the quality of the water is reasonably safe (52 FR 42224 at 42228). Therefore, under the amended NPDWR, EPA allows a specified number or percentage of monthly samples to be coliform positive and concluded that the revised MCL it established for total coliforms is as close to the MCLG of zero as is feasible.

III. The FDA Proposal

A. The Agency's Approach to the Bottled Water Quality Standard Established Under Section 410 of the Act

Under section 401 of the act (21 U.S.C. 341), FDA may promulgate a regulation establishing a standard of quality for a food under its common or usual name when, in the judgment of the agency, such action will promote honesty and fair dealing in the interest of consumers. On November 28, 1973 (38 FR 32558), FDA established a quality standard for bottled water which is set forth in § 103.35 (21 CFR 103.35).

Producers of bottled water are responsible for ensuring, through appropriate manufacturing techniques and sufficient quality control procedures, that all bottled water products introduced or delivered for introduction into interstate commerce comply with the quality standard. Bottled water that is of a quality that is below the prescribed standard is required by § 103.35(f) to be labeled with a statement of substandard quality. Moreover, any bottled water containing a substance at a level that causes the food to be adulterated under section 402 (21 U.S.C. 342) of the act is subject to regulatory action, even if the bottled water bears a label statement of substandard quality.

FDA has traditionally fulfilled its obligation under section 410 of the act to respond to EPA's issuance of NPDWR's by amending the quality standard for bottled water to maintain compatibility with EPA's drinking water regulations. In general, FDA believes that, with few exceptions, the EPA standards for contaminants in drinking water are appropriate as allowable levels for contaminants in the quality standard for bottled water when bottled water may be expected to contain the same contaminants. FDA has generally not duplicated the efforts of EPA in judging the adequacy of NPDWR's for the protection of the public health, nor has it duplicated EPA's efforts in

judging the adequacy of National Secondary Drinking Water Regulations (NSDWR's) for control of aesthetic characteristics affecting consumer acceptance of drinking water. It would be redundant for FDA to reevaluate the drinking water standards prescribed by EPA, the agency with primary responsibility for these contaminants. Further, because bottled water is increasingly used in some households as a replacement for tap water, consumption patterns considered by EPA for tap water can be used as an estimate for the maximum expected consumption of bottled water by some individuals. Therefore, FDA's view is that in cases where bottled water is subject to the same source contaminants as tap water (e.g., when bottled water is produced with the same source waters used by public water systems), allowable levels for contaminants set to ensure the safety of bottled water, and levels set to ensure its aesthetic quality, should normally correspond to the levels set by EPA as the NPDWR's and NSDWR's for tap water.

B. Provisions for Coliform Bacteria

1. Current Provisions in the Quality Standard

The current requirements in the quality standard for bottled water applicable to coliform bacteria, as set forth in § 103.35(b), provide that: (1) No more than 1 of the 10 analytical units representing a sample have a most probable number (MPN) of 2.2 or more coliforms per 100 mL, and that no analytical unit have an MPN of 9.2 or more coliforms per 100 mL, when determined by the MTF technique; or (2) no more than 1 of the 10 analytical units representing a sample have 4.0 or more coliforms per 100 mL, and that the average coliform density for the 10 analytical units shall not exceed 1 coliform per 100 mL, when determined by the MF technique.

2. Current Good Manufacturing Practices for Bottled Water

The current good manufacturing practice (CGMP) regulations for bottled water, as set forth in part 129 (21 CFR part 129), require that the water to be bottled be obtained from an approved source that is properly located, protected, and operated; be of a safe, sanitary quality; and be in compliance at all times with the applicable laws and regulations of the government agency or agencies having jurisdiction (§ 129.35). Furthermore, § 129.37 requires that the product water-contact surfaces of all multiservice containers, utensils, pipes, and equipment used in the transportation, processing, handling,

and storage of product water be clean and adequately sanitized. Additionally, § 129.80(f) requires that bottlers sample and inspect containers of bottled water to ascertain that they are free from contamination.

3. Justification for Requiring That Coliforms not be Present in Bottled Water

FDA tentatively concludes that EPA's MCLG of zero for total coliforms in public drinking water is desirable as an allowable level for these bacteria in bottled water because the presence of coliform bacteria in bottled water (as determined by a positive test for total coliforms) indicates that fecal pathogens that can cause disease outbreaks may be present. EPA's revised MCL, which is established as close to the MCLG of zero as is feasible, allows a specified number or percentage of drinking water samples to be positive for total coliforms primarily because of the persistent presence of coliforms in some distribution systems. However, because water bottlers do not use such distribution systems to deliver finished bottled water products, FDA tentatively finds that an allowance for the presence of coliforms in any samples of bottled water is not appropriate.

FDA recognizes that some bottlers use source waters obtained from public water systems for bottling, and that if these source waters are from systems in which coliforms are persistent, they may contain some coliforms. Nevertheless, the CGMP regulations (part 129) require that source waters for bottling be of a safe, sanitary quality (§ 129.35(a)(1)). Therefore, whenever bottlers encounter coliform contamination in their bottled waters, a finding that suggests contaminated source water or insanitary conditions in the plant, FDA considers it reasonable and appropriate, for quality as well as for public health purposes, that they test the source water for the presence of coliforms. If coliforms are present, the bottlers can, in accordance with § 129.80(a) treat the source water to remove the coliforms to produce bottled waters that are free of coliform contamination in compliance with the quality standard regulations.

Based on available bottled water survey information, FDA believes that bottlers can produce bottled water products that are free of coliform contamination. In a 1987 survey of bottled water sold in Massachusetts (Ref. 3), the Massachusetts Department of Public Health analyzed 71 samples of domestic and imported bottled water for total coliforms using the MF technique. The results showed that 70 samples had

less than 1 coliform per 100 mL, while the remaining one sample had 1 coliform per 100 mL. In a 1990 survey of bottled water to obtain information on domestic and imported bottled waters with regard to manufacturing practices, quality criteria, and labeling practices (Ref. 4), FDA analyzed 48 domestic and 62 imported bottled water samples for the presence of coliform bacteria using either the MTF technique or the MF technique. All samples had an MPN below the current quality standard of 2.2 coliforms per 100 mL.

4. Proposed Revisions to the Microbiological Quality Standard

As discussed above, FDA tentatively concludes that bottled water that is free of coliform bacteria is desirable to reduce the risk of disease outbreaks caused by the presence of fecal pathogens. In addition, based on available bottled water survey information, FDA believes that most bottlers can produce bottled waters that are free of coliform contamination. Therefore, FDA is proposing to revise the microbiological quality standard in § 103.35(b)(1) to provide that coliform bacteria not be present in bottled water. Further, FDA is proposing to establish new § 103.35(b)(1)(i) and (b)(1)(ii) to incorporate by reference the analytical methods that EPA has established for determining compliance with the quality standard. Specifically, proposed 103.35(b)(1)(i) cites the MTF technique, the MF technique, and the P/A Coliform test, and proposed § 103.35(b)(1)(ii) cites the Minimal Media ONPG-MUG technique.

To maintain consistency with EPA standards as well as to provide uniform samples for purposes of compliance testing, FDA is proposing in § 103.35(b)(1) to adopt 100 mL as the sample volume to be analyzed, regardless of the analytical method used for determining compliance with the quality standard. If FDA adopts the proposed regulation, the presence of coliform bacteria in any sample analyzed for the purpose of ascertaining the compliance of a particular lot or a production run with the quality standard will establish that the lot or run does not meet the requirements of the standard and will subject the lot or run to the substandard quality labeling provisions of § 103.35(f).

Based on EPA's requirement that water systems invalidate test results for drinking water samples (unless coliforms are detected) that show evidence of interference from heterotrophic bacteria when analyzed with the MTF technique, the MF technique, or the P/A Coliform test,

FDA is proposing in § 103.35(b)(1) to invalidate a sample for compliance purposes (unless total coliforms are detected) when any analytical unit analyzed for total coliforms by any one of the methods cited in the proposed § 103.35(b)(1)(i) provides evidence of interference from heterotrophic bacteria. Further, FDA is proposing to establish a new paragraph 103.35(b)(1)(iii) that describes the evidence of interference from heterotrophic bacteria that EPA characterized for drinking water samples when using the methods cited in the proposed § 103.35(b)(1)(i). Therefore, under the proposal, whenever such interference (as described in the proposed paragraph 103.35(b)(1)(iii)) is encountered, another sample from the same lot will have to be analyzed for compliance using the Minimal Media ONPG-MUG technique cited in the proposed § 103.35(b)(1)(ii) which is less susceptible to interference from heterotrophic bacteria.

Finally, FDA is proposing to remove the entry in § 103.35(b)(2) because the existing provisions in that section requiring that no more than one analytical unit of a sample shall have 4 or more coliform organisms per 100 mL, and that the arithmetic mean of the coliform density of the sample shall not exceed one coliform organism per 100 mL, when using the MF method, are not applicable under this proposed rule.

5. Effect of Related Provisions of CGMP for Bottled Water

The CGMP regulations for bottled water, in § 129.35(a)(3)(i), require analysis of source water obtained from other than a public water system as often as necessary, but at least once each week, for microbiological contaminants. Further, to ensure that a plant's production complies with applicable standards, § 129.80(g)(1) requires analysis, at least weekly, of a representative sample from a batch or segment of a continuous production run for each type of bottled drinking water produced during a day's production. The CGMP regulations also require in § 129.80(a) sampling and analysis, as often as necessary, of source water taken after processing but before bottling, to ensure the uniformity and effectiveness of the processes performed by the plant.

If this proposal becomes a final rule, these sampling and testing requirements will continue to apply for total coliforms. However, each lot of bottled water will have to comply with the quality standard for microbiological contaminants. Compliance with the minimum weekly CGMP testing requirements of part 129 will not exempt a firm from regulatory action if

any lot of bottled water products does not meet the microbiological quality standard for bottled water.

Under § 184.1563(c) (21 CFR 184.1563(c)), bottlers can use ozone as a disinfectant for bottled water products that meet the quality standard regulations contained in § 103.35. Consequently, should FDA finalize this proposal requiring that bottled water be free of coliform bacteria, and should bottlers encounter coliform bacteria in their source water or in their product, bottlers will have to remove the coliform bacteria before ozonation. However, based on available bottled water survey information, FDA believes that most bottlers are using source waters that are free of coliform contamination to produce coliform free bottled water products. FDA, therefore, believes that this proposal will not affect bottler's use of ozone under the conditions prescribed in § 184.1563(c). FDA requests comments on whether this proposal will cause bottlers that are using ozone as a disinfectant to further treat their water to remove coliforms before ozone can be used and on the cost of such treatment to bottlers.

IV. Proposed Recodification of 21 CFR 103.35

In the Federal Register of January 5, 1993 (58 FR 393), FDA proposed to establish a standard of identity for bottled water in § 165.110(a) (21 CFR 165.110(a)). In addition, FDA proposed to move the standard of quality for bottled water from § 103.35 to § 165.110 because § 103.5(c) (21 CFR 103.5(c)) states that, should a standard of identity be established for any of the foods defined by a standard of quality in part 103, the standard of quality will be recodified as part of the standard of identity. Therefore, should the agency finalize the January 5, 1993 (58 FR 393) proposal, the provision on the microbiological quality of bottled water contained in paragraphs 103.35(b), (b)(1), and (b)(2) will be recodified respectively as paragraphs 165.110(b)(2), (b)(2)(i), and (b)(2)(ii).

V. Other Issues Concerning the Microbiological Quality of Bottled Water

A. Heterotrophic Bacteria In Bottled Water

In a 1990 bottled water workshop sponsored by the Office of Technology Assessment and the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives (Ref. 5), some bottled water experts expressed concern about the presence of

heterotrophic bacteria in bottled water because they believe that consumption of bottled waters containing high levels of heterotrophic bacteria poses a health risk (Refs. 6 and 7). Moreover, in a 1991 congressional hearing on bottled water (Ref. 8), the Subcommittee on Oversight and Investigations of the House of Representatives expressed concern about the high levels of heterotrophic bacteria detected in some bottled water samples that were analyzed as part of FDA's 1990 bottled water survey (Ref. 4). In response to these concerns, FDA is presenting the following discussion on its approach to evaluating the quality and safety of bottled water products that contain high levels of heterotrophic bacteria, and on the actions that it will consider taking when high levels of heterotrophic bacteria are found in bottled water.

The concept of establishing a standard plate count limit for heterotrophic bacteria in bottled water has previously been considered by the agency. In a proposal of January 8, 1973 (38 FR 1019), to establish a quality standard for bottled water, FDA proposed a standard plate count limit of 500 heterotrophic bacteria per mL. In the final rule (38 FR 32558, November 26, 1973) based on that proposal, FDA noted that several comments objected to the standard plate count limit of 500 heterotrophic bacteria per mL contending that such a limit does not have any bearing on the quality or safety of bottled water, is equivalent to requiring a sterile product, and is unduly restrictive when compared with the levels of microorganisms permitted or commonly encountered in other foods. FDA also noted that other comments argued that bottled water should be commercially sterile because microorganisms could multiply in bottled water and often could be pathogenic to the young, old, and debilitated.

In response to these comments, FDA stated that source waters for bottling can be treated to greatly reduce the total number of microorganism and to remove or destroy pathogenic organisms. FDA further stated that, although treated source water that is sealed in a bottle without any residual chemical disinfectant can be expected to contain a few microorganisms that are natural to the water and that can be expected to multiply during storage, no microbial spoilage or contamination occurs. FDA concluded in the final rule that a standard plate count limit for heterotrophic bacteria in bottled water was not necessary in light of the proposed requirements presented in a separate proposal to establish CGMP regulations for bottled water, which also

published in the Federal Register of November 26, 1973 (38 FR 32563). In that document, FDA proposed to require that bottled water be monitored for pathogenic organisms, and that bottled water be processed, bottled, held and transported under sanitary conditions to ensure the safety of the product. FDA issued a final rule based on the proposal to establish the CGMP regulations for bottled water on March 12, 1975 (40 FR 11566).

FDA still believes that, when bottled waters are free of microorganisms that are of public health significance (i.e., indicated by the absence of coliforms) and are bottled under sanitary conditions in compliance with the CGMP regulations (part 129), the presence of heterotrophic bacteria that are part of the natural flora in those bottled waters normally will not pose a health risk because these organisms do not colonize the digestive tract of humans (Ref. 7).

However, in some instances, FDA believes that a heterotrophic bacteria level of 10,000 or more per mL in a bottled water product may be a cause for concern because it could indicate either possible insanitary conditions in the plant or inadequately treated water from a contaminated water source (Ref. 9). Conversely, FDA would not necessarily view a level in excess of 10,000 heterotrophic bacteria per mL in a bottled water product with concern in cases where the agency can establish that the bottler has taken appropriate steps to ensure that the finished product does not contain pathogenic organisms (i.e., as indicated by the absence of coliforms), and that the bottled water product has been produced in accordance with part 129. When these criteria are met, FDA believes that the heterotrophic bacteria are part of the natural flora of the bottled water and are innocuous.

Therefore, whenever FDA encounters heterotrophic bacteria levels of 10,000 or greater per mL in samples of bottled water (e.g., in survey samples that the agency may periodically collect or in analyses for total coliforms as interfering organisms), it will consider conducting a follow-up inspection at domestic bottlers to determine whether the bottler is operating in accordance with the requirements of the bottled water quality standard in § 103.35 and the CGMP regulations in part 129.

In the case of imported bottled water products with 10,000 heterotrophic bacteria or more per mL, FDA may decide to review the available information on the product in question pertaining to the manufacturer's compliance with § 103.35 and part 129.

In particular the agency will consider information that addresses the proper protection of the source water, the testing to verify that pathogenic microorganisms are absent (i.e., as indicated by the absence of coliforms) in the product water, and the observance and documentation of appropriate sanitary practices during production, transportation, and storage of bottled water products. If, after review of all available information, FDA still has concern about a bottled water product that contains high levels of heterotrophic bacteria, the agency will consider recommending detention and refusal of entry for the product. If, however, such information is not available to the agency, to ensure the protection of the public from potential adverse health effects of high levels of heterotrophic bacteria in bottled water, FDA tentatively concludes that it has no alternative than to recommend detention and refusal of entry for the product.

FDA requests comments on whether the above approach by the agency is appropriate to protect the public from potential health risks of heterotrophic bacteria in bottled water, or whether the agency should establish a standard plate count limit for heterotrophic bacteria in bottled water. Interested persons who believe that FDA should establish a standard plate count limit should address what that limit should be, and how and to what degree a given standard plate count limit would reduce illnesses associated with bottled water. FDA also requests information on the costs to bottlers of compliance with such a limit. Based on the comments that FDA receives, it may retain the approach discussed above, it may consider alternative approaches to take when it finds high levels of heterotrophic bacteria in bottled water, or it may consider proposing to establish a microbiological quality standard for heterotrophic bacteria in bottled water.

B. Request for Comments Concerning Need for Quality Standard to Address Other Pathogenic Organisms

Bottled water, unlike public drinking water, usually contains no residual disinfectant such as chlorine to control the growth of any bacterial population that may be present after bottling. Ozone and ultraviolet radiation, the principal disinfectants used in bottled water production, may decrease but rarely eliminate the natural bacterial population present in the source water (Ref. 6). Moreover, bottled water products may be held for a long period of time before consumption. Therefore,

if certain kinds of bacteria (e.g., *Pseudomonas aeruginosa* (*P. aeruginosa*)) that can grow in substrates that are extremely poor in nutrients are present at the time of bottling, the bottled water product can be a suitable environment for growth and limited proliferation of those organisms. Indeed, *P. aeruginosa* has reportedly been detected in studies that examined the bacterial quality of bottled water (Refs. 6 and 7). Further, in its 1990 bottled water survey, FDA detected large numbers of *P. aeruginosa* in two bottled water samples (9.6 x 10⁶ colony forming units/mL (CFU/mL) and 4.3 x 10³ CFU/mL) that complied with the coliform standard by containing less than 2.2 MPN of total coliforms (Ref. 4).

P. aeruginosa, considered a ubiquitous inhabitant in surface waters and soil, is an opportunistic bacteria that is pathogenic to the young, old, and immunocompromised (Refs. 10 and 11). Although most *P. aeruginosa* infections have been associated with contaminated hospital environments and medical equipment (Refs. 10, 12, 13, and 14), outbreaks of mild to severe gastroenteritis have been associated with ingestion of food or water contaminated with *P. aeruginosa* (Refs. 10, 12, 13, 15, and 16). Furthermore, because the sources for *P. aeruginosa* contamination in water may include fecal wastes of humans and animals associated with humans (Refs. 10 and 11), the presence of *P. aeruginosa* in bottled water may indicate either contamination of the source water used for bottling or insanitary conditions at the plant.

As stated above, bottled water is different from public drinking water in that it usually does not contain residual disinfectant and may be held for long periods before consumption. Consequently, to ensure its safety, different microbiological requirements may be appropriate for bottled water than for public drinking water. FDA requests comments on whether the agency should establish a microbiological quality standard for *P. aeruginosa* in bottled water. Interested persons should address whether the presence of *P. aeruginosa* in bottled water produced in compliance with the applicable quality standard and CGMP regulations may pose a health risk to individuals. Moreover, interested persons who believe that a standard should be established should address what that standard would be.

Interested persons are also requested to provide information on how and to what degree a standard for *P. aeruginosa* would reduce illnesses associated with bottled water and information on the

costs to bottlers for compliance with such a standard. Should FDA receive information that provides convincing evidence that *P. aeruginosa* contamination in bottled water may pose a significant health risk, the agency will consider adopting a quality standard for *P. aeruginosa* in bottled water.

The agency also requests comments on the need to establish microbiological standards for any other pathogens, opportunistic pathogens, or indicator organisms that may be present in bottled water. FDA notes that the microbiological standards for European mineral waters, in addition to specifying the absence of coliforms, require that samples of natural mineral water be free of *P. aeruginosa*, faecal streptococci, and sporulated sulfite-reducing anaerobes (Refs. 17, 18, and 19). In addition to providing a substantive technical basis (including information on the number of infections associated with ingestion of contaminated bottled water) for any additional requirements suggested for the microbiological quality standard, the agency requests that interested persons include information that allows the agency to assess the economic impact, including costs that such requirements may impose on water bottlers (e.g., costs of analytical methods for detection of microorganisms and treatment techniques for the removal of microorganism) and benefits. Further, FDA requests that interested persons address whether the CGMP regulations for bottled water are adequately protective (i.e., will compliance with the CGMP regulations ensure that bottled water products are free from contamination by microorganisms that are of potential concern).

In a final rule of June 29, 1989 (54 FR 27486), EPA established treatment technique requirements to remove or inactivate the cysts of the parasite *Giardia lamblia* in surface water and ground water under the influence of surface water. EPA stated that the treatment technique requirements would also protect against the potential adverse health effects of exposure to enteric viruses, *Legionella*, and heterotrophic bacteria, as well as many other pathogenic organisms that are removed by the treatment technique requirements. FDA, in response to EPA's rulemaking, is considering the need to establish comparable disinfection and filtration treatment requirements during processing and bottling of bottled drinking water (part 129). Therefore, FDA requests comments on whether it should establish treatment requirements for bottled water to protect against *Giardia*

lamblia cysts and other pathogenic microorganisms, and on whether it is appropriate or necessary for the agency to establish requirements in the bottled water quality standard to control other microorganisms (e.g., *P. aeruginosa*, *Aeromonas hydrophila*, faecal streptococci, sporulated sulfite-reducing anaerobes) that may be present in bottled water and that may pose a health risk.

VI. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VII. Economic Impact

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act and Executive Order 12291. The Regulatory Flexibility Act requires relief for small businesses where feasible. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In compliance with the Regulatory Flexibility Act (Pub. L. 96-354), FDA certifies that the proposed rule will not have a significant adverse impact on a substantial number of small businesses.

FDA believes that bottlers are currently producing bottled water products from which coliform bacteria are generally absent when samples of the products are analyzed using methods described in this proposal, and that, if this proposed rule becomes final, bottlers may incur negligible costs in order to comply with this regulation. The agency believes that the results of the surveys (Refs. 3 and 4) that reported that bottled water products were almost universally being produced with less than 1 coliform per 100 mL could not have been achieved if bottled water products were not, with rare exception, free of coliform bacteria. Under the CGMP regulations for bottled water (part 129), bottlers are required to test for coliforms. This proposed rule will not affect the frequency of coliform testing conducted by bottlers. Because the agency believes that bottlers will not have to alter any of their current practices or equipment for compliance with this regulation, and that bottled water products are already generally

free of coliforms, the costs of this proposed rule are expected to be low. For the same reason, the quantifiable benefits may also be low. The rule will, however, provide a legally enforceable standard that needs to be met to assure the continued safety of bottled water.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Craun, G., "Impact of the Coliform Standard on the Transmission of Disease," in "Evaluation of the Microbiology Standards for Drinking Water," C. Hendricks, Ed. U.S. EPA, EPA 570/9-78-00C. Washington, DC, 1978.
2. EPA, Office of Drinking Water, "Drinking Water Criteria Document for Total Coliforms," PB 86-118148, National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, 1984.
3. Massachusetts Department of Public Health, Division of Food and Drugs, "Survey of Bottled Water Sold in Massachusetts," Jamaica Plain, MA 02130, 1987.
4. FDA FY 90 Bottled Water Survey, 1990.
5. Proceedings of the Bottled Water Workshop, a Report Prepared for the use of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, U.S. Government Printing Office, Washington, DC, pp. 72-94, 127-132, September 13 and 14, 1990.
6. Rosenberg, F. A., "The Bacterial Flora of Bottled Waters and Potential Problems Associated With the Presence of Antibiotic-Resistant Species," Proceedings of the Bottled Water Workshop, September 13-14, 1990, A Report Prepared for the Use of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, December 1990, pp. 72-84.
7. Geldreich, E. E., "Bottled Water: Microbial Quality of Alternative Water Supply," Proceedings of the Bottled Water Workshop, September 13-14, 1990, A Report Prepared for the Use of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, pp. 85-94, December 1990.
8. Bottled Water Regulation. Hearing before the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, House of Representatives, 102d Congress, 1st sess., U.S. Government Printing Office, Washington, DC, pp. 89-94, April 10, 1991.
9. FDA, memorandum from Joseph M. Madden to Curtis E. Coker, Heterotrophic Plate Counts for Bottled Waters, April 11, 1991.
10. Hoadley, A. W., "Potential Health Hazards Associated with *Pseudomonas aeruginosa*," in "Bacterial Indicators/Health Hazards Associated with Water," A. W. Hoadley and B. J. Dutka, Eds., ASTM STP635, American Society for Testing and

Materials, Philadelphia, PA, pp. 80-114, 1977.

11. Guidelines for Drinking-Water Quality, Vol. 2. "Health Criteria and Other Supporting Information," World Health Organization, Geneva, p. 8, 1984.

12. Bryan, F. L., Other Bacteria, in "Food-Borne Infections and Intoxications," Hans Riemann and Frank L. Bryan, Eds., Academic Press, New York, San Francisco, London, pp. 262-264, 1979.

13. Stiles, M. E., Less Recognized or Presumptive Foodborne Pathogen Bacteria, in "Foodborne Bacterial Pathogens," Michael P. Doyle, Ed., New York: Marcel Dekker, Inc., pp 690-691, 1989.

14. Gilardi, G. L., "Pseudomonas and Related Genera," in "Manual of Clinical Microbiology," W. J. Hausser, K. L. Herrmann, H. D. Isenberg, and H. J. Shadomy, Eds., American Society for Microbiology, Washington, DC, pp 431-432, 1991.

15. Ensign, P. R., and Hunter, C. A., "An Epidemic of Diarrhea in the Newborn Nursery Caused by Milk-borne Epidemic in the Community," Journal of Pediatrics 29:620, 1946.

16. Weber, G., H. P. Werner, and H. Matschnigg, "Death Cases in Newborns Caused by Pseudomonas aeruginosa Contaminated Drinking Water," Zentralblatt für Bakteriologie P. Mikrobiologie, und Hygiene. Series A, Medical Microbiology, Infections Disease, Uriology, Paristology Abt. 1, Orig. B, 216:210-214, 1971.

17. Codex Alimentarius Vol. K, "Recommended International Code of Hygienic Practice for the Collecting, Processing and Marketing of Natural Mineral Waters," Food and Agriculture Organization of the United Nations, World Health Organization, Rome, 1990.

18. "Council Directive of 15 July 1980 on the Approximation of the Laws of the Member States Relating to the Exploitation and Marketing of Natural Mineral Waters," Official Journal of the European Communities, L229, 23:1-10, 1980.

19. Codex Alimentarius Commission, "Conversion of the Codex European Regional Standard for Natural Mineral Waters to a World-wide Codex Standard (Step 3 of the Codex Procedure)," Food and Agriculture Organization of the United Nations, World Health Organization, Rome, February, 1993.

IX. Comments

Interested persons may, on or before December 6, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

X. Effective Date

The agency is proposing to make any final rule based on this proposal

effective 180 days following the date of publication of the final rule in the Federal Register. The agency is requesting comments on the proposed effective date. All comments concerning the effective date should be accompanied by data to support or justify any change in the proposed effective date.

List of Subjects in 21 CFR Part 103

Beverages, Bottled water, Food grades and standards, Incorporation by reference. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 103 be amended as follows:

PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

1. The authority citation for 21 CFR part 103 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 410, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 349, 371, 379e).

2. Section 103.35 is amended by revising paragraph (b) to read as follows:

§ 103.35 Bottled Water.

* * * * *

(b) *Microbiological quality.* Bottled water shall meet the following standard of microbiological quality:

(1) Coliform bacteria shall not be present in any analytical unit derived from samples of bottled water when analytical units of 100 mL are analyzed by any one of the methods specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section. However, whenever a test result obtained from any analytical unit, when using a method described in paragraph (b)(1)(i) of this section, indicates evidence of interference from heterotrophic bacteria (as described in paragraph (b)(1)(iii) of this section), FDA will consider the sample invalid unless total coliforms are detected.

Whenever such interference is encountered, another sample from the same lot shall be analyzed using the method described in paragraph (b)(1)(ii) of this section, i.e., the Minimal Media ortho-nitrophenyl- β -D-galactopyranoside, 4-methylumbelliferyl- β -D-glucuronide method (Minimal Media ONPG-MUG method), which is less susceptible to interference from heterotrophic bacteria than the methods described in paragraph (b)(1)(i) of this section.

(i) Analyses to determine compliance with the requirements of paragraph (b)(1) of this section shall be conducted in accordance with applicable sections

of either the Multiple-Tube Fermentation technique (either the 10-tube technique with a 10 mL portion of the analytical unit per tube or the 5-tube technique with a 20 mL portion of the analytical unit per tube may be used), the Membrane Filter technique, or the Presence/Absence Coliform test which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These three methods are contained in "Standard Methods for the Examination of Water and Wastewater" 18th ed. (1992), American Public Health Association, American Water Works Association, and the Water Pollution Control Federation. Copies of these publications may be obtained from the Publication Office, American Public Health Association, 1051 15th St. NW., Washington, DC 20005, or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(ii) Analyses to determine compliance with the requirements of paragraph (b)(1) of this section, when interference from heterotrophic bacteria (described in paragraph (b)(1)(iii) of this section) is indicated, shall be conducted in accordance with the Minimal Media ortho-nitrophenyl- β -D-galactopyranoside, 4-methylumbelliferyl- β -D-glucuronide method (Minimal Media ONPG-MUG method), also referred to as the Autoanalysis Colilert System. The method is described in the article by Edberg et al., "National Field Evaluation of a Defined Substrate Method for the Simultaneous Detection of Total Coliforms and *Escherichia coli* from Drinking Water: Comparison with Presence-Absence Techniques," published in Applied Environmental Microbiology, Vol. 55, pp 1003-1008, April 1989, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication may be obtained from the American Water Works Association Research Foundation, 6666 West Quincy Ave., Denver, CO 80235, or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(iii) When using the methods described in paragraph (b)(1)(i) of this section, interference from heterotrophic bacteria is indicated by: a turbid culture in the absence of gas production when using the Multiple-Tube Fermentation technique; confluent growth or a colony number that is "too numerous to count" when using the Membrane Filter technique; or a turbid culture in the absence of an acid reaction when using the Presence/Absence Coliform test.

(2) [Reserved]

Dated: September 16, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-24515 Filed 10-5-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 253

Oil Spill Financial Responsibility for Offshore Facilities Including State Submerged Lands and Pipelines

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice extends, by 60 days, the comment period for an advance notice of proposed rulemaking (ANPR) that the Minerals Management Service published in the Federal Register on August 25, 1993. The ANPR is concerned with financial responsibility requirements for offshore facilities pursuant to the Oil Pollution Act of 1990. It describes issues relating to the development of regulations to ensure that parties responsible for offshore facilities have sufficient financial resources to ensure the payment of oil spill cleanup costs and associated damages.

DATES: The comment period is extended to December 24, 1993. Comments should be received or postmarked by that date.

ADDRESSES: Comments should be mailed or hand delivered to the Department of the Interior, Minerals Management Service, Mail Stop 4700, 381 Elden Street, Herndon, VA 22070-4817, Attention: John Mirabella, Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT:

William S. Cook, Chief, Inspection and Enforcement Branch, telephone (703) 787-1591 or FAX (703) 787-1575.

Dated: September 30, 1993.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 93-24547 Filed 10-5-93; 8:45 am]

BILLING CODE 4310-MR-M

30 CFR Part 253

Oil Spill Financial Responsibility for Offshore Facilities Including State Submerged Lands and Pipelines

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public meetings.

SUMMARY: This notice announces two public meetings that the Minerals Management Service (MMS) will conduct to acquire information and data pertinent to the development of regulations implementing financial responsibility requirements of the Oil Pollution Act of 1990 (OPA). An advance notice of proposed rulemaking on this matter was published in the Federal Register on August 25, 1993. It describes issues relating to the development of regulations to ensure that parties responsible for offshore facilities have sufficient financial resources to ensure the payment of oil-spill cleanup costs and associated damages.

DATES: The meetings are scheduled as follows:

1. November 2, 1993, 8:30 a.m. to 5 p.m., New Orleans, Louisiana.
2. November 4, 1993, 8:30 a.m. to 5 p.m., Houston, Texas.

ADDRESSES:

1. New Orleans meeting: MMS Regional Office, 1420 S. Clearview Parkway, New Orleans, Louisiana 70123-2394.
2. Houston meeting: Doubletree Hotel at Allen Center, 400 Dallas Street at Bagby, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Jeff Zippin, Chief, Inspection, Compliance and Training Division; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817; telephone (703) 787-1576.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in public meetings to address the following issues:

- Types and locations of "offshore facilities" subject to OPA financial responsibility requirements;
- Methods available to evidence OPA financial responsibility;
- Interaction of States/Territories and Federal Government to enforce OPA financial responsibility;
- Protection for the responsible parties, the guarantors, and other financial participants; and
- Effects on the local and national economic conditions of OPA financial responsibility requirements.

Additional meetings on these matters are tentatively being considered for

other locations. Announcement of the addresses and dates of any additional meetings will be made at a later time. **PRESENTATIONS:** Presentations by interested parties should focus on the following:

- Proposals and suggestions for addressing the financial responsibility requirements.
- Economic impacts on affected parties of the financial responsibility requirements.

REGISTRATION: There will be no registration fee for these meetings. Participants need not register prior to arrival at the meetings. However, prior notification to Richard Giangerelli, Minerals Management Service, Mail Stop 4800, 381 Elden Street, Herndon, Virginia 22070-4817; or telephone (703) 787-1574, FAX (703) 787-1599, is requested in order to access the probable number of participants. Seating is limited and will be on a first-come-first-seated basis.

Dated: September 30, 1993.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 93-24548 Filed 10-5-93; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[Docket No. 64; Notice No. 93-20]

RIN 2105-AB99

Participation by Disadvantaged Business Enterprises in Airport Concessions

AGENCY: Office of the Secretary (DOT).

ACTION: Proposed rule.

SUMMARY: This NPRM proposes to implement recent changes to the Airport and Airway Improvement Act (AAIA) of 1982, as amended. The proposed rule would allow airport sponsors to count new forms of disadvantaged business enterprise (DBE) participation toward the overall goals of a DBE concession plan. These new forms include purchases from DBE's of goods and services used in the operation of a concession, as well as management contracts and subcontracts with DBE's. The NPRM would amend the DOT's DBE regulations to make these and several other changes.

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: Comments to this notice may be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 64j, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 64j. Comments may be examined in room 915F weekdays between 8:30 a.m. and 5 p.m. except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Irene H. Miels, Airport and Environmental Law Division (AGC-601), Office of the Chief Counsel, (202) 267-3199, or David S. Micklin, Office of Civil Rights (ACR-4), (202) 267-3270, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they desire. Comments relating to the economic effects that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate 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 Docket No. 64j." The postcard will be dated and time stamped and returned to the commenter.

All communications received on or before the closing date for comments will be considered by the Secretary before taking action on the proposed rule. The proposal contained in the notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with DOT personnel concerning this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3464. Requests must identify

the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's also should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

Summary of Proposed Rule

On April 30, 1992, the Department issued a final rule implementing section 511(a) of the AAlA (57 FR 18400). These regulations, designated subpart F of 49 CFR part 23, established requirements for the participation of DBE's in airport concessions. The requirements apply to sponsors that have received a grant for airport development authorized under the AAlA. Primary airports are required by the rule to prepare and implement a written DBE concession plan, while nonprimary airports are required to take outreach steps to encourage DBE's to participate as concessionaires whenever there is a concession opportunity.

Subpart F, as issued on April 30, 1992, references certain sections in the Department's overall DBE rule, 49 CFR part 23, since they are applicable to the DBE concession program. These include § 23.7, "Discrimination prohibited;" 23.45(g)(5) (factors to consider in setting overall goals); 23.51, "Certification of the eligibility of minority business enterprises;" 23.51(c) (circumstances that eliminate need for submission of Schedule A or B); 23.61 (definition of "DBE"); 23.69, "Challenge procedure;" 23.53, "Eligibility standards;" 23.53(d) (joint ventures awarded through set-asides); 23.55, "Appeals of denials of certification as an MBE;" and 23.41(f), "Exemptions."

On December 9, 1992, the Department published an NPRM which would revise 49 CFR part 23 as a whole (See 57 FR 58288.). The amended rule would reflect program changes since 1980, when the initial rule was published. It also would reflect 12 years of experience in implementing the program. If adopted, various sections would be renumbered, as well as substantially changed.

These proposed changes to 49 CFR part 23, if made, would require some revision of subpart F, either as proposed in this NPRM, or as it may be issued in the form of a Final Rule. In the interim, the references in this NPRM will be to the sections as they appear in existing 49 CFR part 23.

Since the December 9, 1992, NPRM to amend 49 CFR part 23 includes some changes that will impact substantially on sections now referenced in the NPRM to amend subpart F, the Department specifically seeks comments on the following sections in the

proposed overall revision, as they apply to the DBE concession program. Commenters who commented on the December 9, 1992, NPRM, from the standpoint of the DBE Federally-assisted contracting program, should review that NPRM again—this time in regard to the DBE concession program.

The relevant sections include: 23.1 (b) and (c) in "Purpose;" 23.5, "Definitions" of "Contract," "Contractor," "Department" or "DOT," "Disadvantaged Business Enterprise," "Joint venture," "Noncompliance," "Operating Administration," "Primary Recipient," "Recipient," "Secretary," "Set-aside," "Small Business Administration or SBA," "Small Business Concern," (as it applies to off-airport DBE's that sell goods or services to on-airport concessions and as it applies to DBE's holding management contracts or subcontracts on airports), and "Socially and economically disadvantaged individuals;" 23.7, "Discrimination prohibited" (as modified to apply to concessions); 23.9, "Exemptions and interpretations;" 23.11, "Reporting requirement;" 23.27 (c)(8) and (d) (application forms and reporting of changes in circumstances); 23.27(e) (1) through (3) (recertification reviews); 23.27 (f) and (g) (statewide unified certification program); 23.29 (a) and (b) "Certification standards;" 23.29(d), "Social and economic disadvantage (except for requirement that a net worth exceeding \$750,000 alone rebuts the presumption of social and economic disadvantage); 23.29(e), (section 8(a) certifications, as modified by size standards in subpart F);" 23.39 (f) through (i) (additional sections on certification standards); 23.31(b) (factors to consider in setting overall goals); subpart C, "Certification, Compliance and Enforcement Procedures" (except for 23.61); and Appendix A, "DBE Certification Form."

Although the above proposed sections differ somewhat from those in existing 49 CFR part 23, in general they reflect the basic principles of the DBE program as it has been implemented since 1980. The Department proposes to apply these provisions to the DBE concession program.

Regarding the proviso in § 23.29(d)(1) concerning a net worth of \$750,000 and its negative impact on a DBE owner's status as a socially and economically disadvantaged individual, the Department is not proposing application of this standard in the DBE concession program. Under section 511(a)(17) of the AAlA, the Secretary may establish the size standards that will qualify DBE concessionaires as small business concerns.

Since DBE's often must compete with non-DBE "mega" firms for concessions, the Department concluded in 1992 that the size standards for DBE concessionaires should be raised. The new standards were published on April 30, 1992, as an appendix to the DBE concession requirements set forth in subpart F of 49 CFR part 23. With the exception of banks, pay telephones, and car rental agencies, concessionaires now may earn as much as \$30 million per year in gross receipts averaged over the 3 years preceding their bid for concession space. Car rentals may earn a maximum of \$40 million per year.

The SBA net worth standard was established to apply to firms with gross receipts far below those established for concessions and is not workable in this context. In effect, the net worth limitation would negate the Department's concession standard, so the Department is not proposing to apply this limitation.

Following issuance of subpart F, section 511(a) of the AIAA was amended by the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 (Pub. L. 102-581). The amendment added a reference to businesses that provide "ground transportation, baggage carts, automobile rentals, or other consumer services" to the public, thereby clarifying that these concessions, as well as those that sell goods, are covered. Since the current rule, through Departmental interpretation, is applicable to both types of concessions, no change to the rule is needed to implement the amendment to section 511(a).

The 1992 amendments to the AIAA also amended section 511 by adding paragraph (h), as follows:

(h) Administration of DBE Assurance—

(1) Management Contracts—In administering subsection (a)(17) of this section, an airport owner or operator is authorized to meet the overall percentage goal established under such subsection by including businesses operated through management contracts and subcontracts. The dollar amount of a management contract and subcontract with a DBE firm shall be added to the total DBE participation in airport concessions and to the base from which the airport's overall percentage goal is calculated. The dollar amount of management contracts and subcontracts with non-DBE firms and the gross revenues of business activities to which management contracts and subcontracts pertain shall not be added to this base.

(2) Purchase of Goods and Services—Except as provided in subsection (h)(3),

an airport owner or operator may meet the overall percentage goal established under subsection (a)(17) of this section by including the purchase from DBE's of goods or services used in businesses conducted on the airport, provided that good faith efforts shall be made by the airport owner or operator and the businesses conducted on the airport to explore all available options to achieve, to the maximum extent practical, compliance with such goal through direct ownership arrangements, including, but not limited to, joint ventures and franchises.

(3) Provision for Car Rental Firms—(A) In complying with subsection (a)(17) of this section, an airport owner or operator shall include the revenues of car rental firms on the airport in the base from which the overall percentage goal set forth in such subsection is calculated.

(B) An airport owner or operator may require a car rental firm to meet any requirement imposed under subsection (a)(17) of this section through the purchase or lease of goods or services from DBE's. In the event that an airport owner or operator requires the purchase or lease of goods or services from DBE's, a car rental firm shall be permitted to meet such requirement by including purchases or leases of vehicles from any vendor that qualifies as a small business concern (as defined by the Secretary by regulation) owned and controlled by socially and economically disadvantaged individuals (as defined under section 505(d)(2)(B)).

(C) Nothing in this subsection or subsection (a)(17) of this section shall require a car rental firm to change its corporate structure to provide for direct ownership arrangements in order to meet the requirements of such subsection or subsection (a)(17).

(4) General Provisions—(A) Nothing in this subsection or subsection (a)(17) shall preempt any State or local law, regulation, or policy enacted by the governing body of an airport owner or operator, or the authority of any State or local government or airport owner or operator to adopt or enforce any law, regulation, or policy relating to DBE's.

(B) An airport owner or operator shall be permitted to afford opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals to participate through direct contractual agreement with such concerns.

(5) Exclusion of Air Carrier Services—Air carriers in providing passenger or freight-carrying services and other businesses that conduct aeronautical activities at an airport shall not be included in the overall percentage goal

set forth in subsection (a)(17) of this section for participation of small business concerns at the airport.

With the exception of paragraph (3)(A), the provisions of section 511(h) are discussed further herein, in conjunction with the specific sections proposed to amend subpart F. No amendment is necessary to implement paragraph (3)(A), since subpart F already requires the gross receipts from car rental firms to be included in the base from which the overall goals of a DBE concession plan are calculated.

Section by Section Analysis

Section 23.89 Definitions

In a matter unrelated to the AIAA amendments, the Department proposes to amend the definition of "affiliation." Currently, the rule incorporates the definition used by the Small Business Administration (SBA) in 13 CFR part 121. Under § 121.401(l), affiliation may arise through a joint venture agreement, requiring the parties thereto to count the gross receipts earned by both in making a size determination.

The Department believes that joint venture agreements can offer DBE's a viable means of participating in the program when a lease, sublease, or other arrangement is not feasible. Since many of the major concessionaires, with whom DBE's may form joint ventures, are very large, such an arrangement would frequently put the DBE over the size standard.

Sections 511(a) and 511(h)(3)(B) of the AIAA delegate authority to the Secretary to designate the size standards. The Department chose to use the SBA's definition of "affiliation" in implementing section 511(a), but was not bound by the statute to do so. The NPRM proposes to retain the SBA's definition of "affiliation," except that § 121.401(l) of the SBA regulations 13 CFR part 121, "Affiliation under joint venture agreements," would not apply to the definition used in subpart F.

A minor change is proposed to the definition of "concession" to conform to the language of section 511(h)(5), which excludes air carrier services.

The NPRM proposes to adopt a new definition of "management contract or subcontract" in order to facilitate implementation of section 511(h)(1) of the AIAA. That term would mean "an agreement with a sponsor or a derivative subagreement under which a firm operates a business activity, the assets of which are owned by the sponsor." To qualify under the definition, the business activity must be located at an obligated airport and be engaged in the

sale of consumer goods or services to the public.

For the reasons discussed above, the NPRM proposes to modify the definition of "socially and economically disadvantaged individuals" to specify that the \$750,000 limitation on net worth does not apply to this subpart..

Section 23.93 Requirements for Airport Sponsors

This section would be amended to make the nondiscrimination provisions applicable to management contracts or subcontracts and to agreements for the purchase or lease of goods and services.

Section 23.95 Elements of Disadvantaged Business Enterprise (DBE) Concession Plan

Under proposed § 23.95(a)(6)(i), a sponsor that calculates its overall goals as a percentage of the estimated gross receipts from all concessions is permitted to add the estimated dollar value of a management contract or subcontract with a DBE to the total of DBE participation and to the base from which the goal is calculated. The dollar value of management contracts and subcontracts with non-DBE's is not added to the base.

Proposed § 23.95(a)(6)(ii) permits these sponsors to include in the overall goal and the base, the estimated dollar value of goods or services that a non-DBE concessionaire will purchase from DBE's and use in operating the concession. In accordance with section 511(h)(2) of the AIAA, credit for these purchases is subject to satisfying certain good faith efforts requirements, a provision that is discussed below in connection with § 23.95(j).

Finally, these sponsors may include in the goal and the base, the estimated dollar value of goods or services that a non-DBE car rental firm will purchase or lease from a DBE, including the purchase or lease of vehicles, and use in operating the concession. Section 511(h)(3) of the AIAA does not establish a good faith efforts test (discussed below under § 23.95(j)) as a condition of including these costs in the goal.

Under proposed § 23.95(a)(8)(ii), a sponsor that calculates the overall goals as a percentage of the total number of concessions may add the number of management contracts and subcontracts with DBE's to the total DBE participation and the base from which the goal is calculated. Management contracts and subcontracts with non-DBE's are not added to the base.

Section 23.95(b), "Goal Methodology," would be amended to require information on these new forms

of DBE participation that the sponsor expects to count toward its goals.

A new § 23.95(d) would be added to the rule entitled "Counting DBE Participation Toward Meeting the Goals" to accommodate the new DBE participants discussed above under § 23.95(a). This section also would formalize Departmental policy on crediting DBE participation toward concession goals under joint venture agreements.

Additionally, proposed § 23.95(d) would incorporate the "commercially useful function" provision from § 23.47(d) of part 23, which currently applies only to DOT-assisted contractors. While the requirement to perform a commercially useful function would be made applicable to any DBE eligible under subpart F, it would be particularly useful in evaluating firms which provide services or supplies, and which subsequently enter into subcontracts. Guidance is included in § 23.47(d) for determining whether a subcontracting practice meets the standard for a commercially useful function.

The Department invites commenters to provide examples of typical or well-recognized purchasing and leasing practices, which may be useful to include in any final rule.

With the addition of the new DBE participants to the program, sponsors may expect to receive an increased number of applications for DBE certification. While the Department believes that it is very important to ensure that only eligible DBE's benefit from the program, it seeks to minimize administrative requirements.

Thus, § 23.95(g)(6) proposes to allow sponsors to give full faith and credit to a certification made by another DOT recipient when the certified firm is a management contractor or subcontractor or a provider of goods or services located off airport property. The term "full faith and credit" would mean that the certifying agency, not the accepting agency, assumes ultimate responsibility for the validity of the certification.

In the event that the Federal Aviation Administration (FAA) comes to believe that such a certification is defective, it could contact the certifying agency or, if that agency is not an FAA recipient, the Federal Highway Administration or Federal Transit Administration would be asked to inquire into the matter.

The Department invites comments on this proposal and solicits other suggestions for reducing regulatory requirements. In particular, the Department solicits comments on the feasibility of adopting a self-certification procedure in limited circumstances.

Under this procedure, a sponsor would be permitted to accept without further review the eligibility information submitted by an applicant.

Use of the procedure could be limited to special categories of contracts, such as to providers of goods or services, or to contracts of less than a designated dollar value, or to some combination of these factors. The Department does not propose to apply self-certification to concessionaires.

Additionally, the Department solicits comments on whether a sponsor should be permitted to accept a certification made by a local or state agency that receives no DOT funding, but which uses the same eligibility criteria as employed under the DOT's DBE program. The Department is aware of several agencies that fall into this category.

Proposed § 23.95(j)(2) implements the good faith efforts requirement set forth in § 511(h)(2) of the AIAA. As a condition of counting the purchases of goods and services toward DBE goals, the sponsor and concessionaire making the purchase would be required to make good faith efforts to explore all available options to achieve, to the maximum extent practical, DBE participation through direct ownership arrangements, including, but not limited to, joint ventures and franchises. Good faith efforts would include, but not be limited to, those which sponsors currently must make to achieve their overall DBE goals.

Section 23.97 Obligations of Concessionaires and Competitors

The "Provision for Car Rental Firms" found in sections 511(h)(3) (B) and (C) of the AIAA is incorporated into § 23.97 of the proposed rule. Section 511(h)(3)(C) provides that "Nothing in the [AIAA] shall require a car rental firm to change its corporate structure to provide for direct ownership arrangements in order to meet the requirements of the [AIAA]." Although the legislation does not define what is meant by a change to corporate structure, Senator Wendell Ford addressed this point, as follows:

Section 511(h)(3)(C) of AIAA, as amended, provides that nothing in the law on DBE assurance 'shall require a car rental firm to change its corporate structure to provide for direct ownership arrangements.' For example, a car rental firm is not required, but is permitted, by the DBE assurance sections 511(a)(17) and 511(h) of the AIAA, as amended, to transfer corporate assets or engage in joint ventures, partnerships, or subleases. I would like to repeat that this language has been agreed to by both the car rental industry and the airports.

138 Cong. Rec. S 17843 (October 8, 1992) (statement of Sen. Ford).

In an extension of his remarks on the floor of the House of Representatives on October 2, Representative James L. Oberstar submitted a similar statement for the Congressional Record on October 8, 1992 (138 Cong. Rec. E 3501). Representative William F. Clinger submitted the same statement to the Congressional Record, as an extension of his remarks. (138 Cong. Rec. E 3257.)

The proposed rule defines "change to corporate structure" so as to be consistent with the sense of Congress, as described above.

Section 23.97(c) incorporates the provision in section 511(h)(4)(B) of the AAlA, which permits a sponsor to afford DBE firms opportunities to participate as prime concessionaires through direct contractual relationships with the sponsor. Inclusion of this provision does not represent a change to the rule. Section 23.89 currently states under the definition of a "concessionaire" that a concession may be operated under a lease, as well as a sublease or other agreement.

Section 23.109 Compliance and Enforcement

This section would be expanded to include a new paragraph on complaint processing. The NPRM provides that any person who believes that there has been a violation of subpart F may file a written complaint in accordance with FAA regulations 14 CFR part 13, "Investigative and Enforcement Procedures." Complaints meeting the requirements in part 13 will be docketed and processed as formal complaints.

The FAA is required to utilize the procedures set forth in part 13 to investigate alleged violations of the AAlA, including the DBE provisions of sections 511(a) and 511(h). (See 14 CFR 13.1 and 13.3.) The complaint procedures in § 23.73 of 49 CFR part 23, which are based on title VI of the Civil Rights Act of 1964, are not used by the agency in processing DBE complaints.

This section implements section 519 of the AAlA, which empowers the FAA Administrator to take enforcement action against noncomplying recipients in regard to violations of the AAlA, including DBE provisions.

Section 23.111 Effect of Subpart

This section would be expanded to incorporate the provisions of section 511(h)(4) of the AAlA, which enables sponsors to adopt or enforce DBE programs under state or local authority. The rule would also make clear that in the event of a conflict between the requirements of subpart F and such

local program, the sponsor must, as a condition of remaining eligible for Federal financial assistance, take such steps as may be necessary to comply with the requirements in subpart F.

Proposed § 23.111(c), concerning set-asides, is virtually identical to a provision which the Department has proposed to use for construction and other DOT-assisted contracting. The proposal appeared in an NPRM to amend 49 CFR part 23, published on December 9, 1992 (see 57 FR 58288 at 59309, § 23.35(f)). Like the December 9 NPRM, subpart F would neither prohibit nor authorize the use of set-asides. Subpart F would clarify that sponsors are prohibited from using group-specific set-asides (e.g., a set-aside solely for a particular group of disadvantaged individuals, as opposed to a set-aside for all DBE firms).

Appendix A to Subpart F—Size Standards for the Airport Concession Program

While subpart F currently designates small business size standards for concessionaires, the Department must decide on standards to be used for the new DBE participants, including management contractors and subcontractors and providers of goods and services. As noted, the AAlA delegates authority to the Secretary to establish these standards.

Although the Department is not required to use the SBA standards, the NPRM proposes to adopt these standards for management contractors and providers of goods and services other than automobile dealerships. Unlike concessionaires, these businesses generally are not required to make a substantial capital investment in a leasehold facility. Thus, these firms will not encounter the hardships associated with "graduating" from the program after exceeding the SBA standard that ordinarily would befall concessionaires. Moreover, this turnover would allow more DBE's to enter and benefit from the program.

On the other hand, the Department believes that SBA's size standard for automobile dealerships, currently set at a maximum of \$11.5 million (average annual gross receipts over preceding 3 years), is on the low side. Thus, the Department solicits comments as to what an appropriate standard might be.

Economic Summary

Executive Order 12291 established the requirement that, within the extent permitted by law, a Federal regulatory action may be undertaken only if the potential benefits to society for the regulation outweigh the potential costs

to society. In response to this requirement, and in accordance with Department of Transportation policies and procedures, the FAA has estimated the anticipated benefits and costs of this rulemaking action. The results are summarized in this section.

The proposed rule would implement recent changes to the airport grants program by allowing airport sponsors to count additional activities as Disadvantaged Business Enterprises towards the overall goals of a DBE concession plan. The proposed rule would allow purchases from DBE's of goods and services used in the operation of a concession, as well as management contracts and subcontracts with DBE's.

Under current procedures, the extent of DBE participation is ordinarily determined by dividing the gross receipts attributable to DBE enterprises by the total receipts generated by those activities in which DBE's may participate (i.e., airport concessions). In particular instances, the FAA has allowed goal setting to be based on the number of concessions. In other words, all receipts from concessions, including proceeds received from non-DBE enterprises, are added to the base from which the overall goal is calculated.

The result is that airport sponsors which have few current opportunities for DBE participation have considerable difficulty meeting the statutory goal of at least 10 percent DBE participation. They face two problems: (1) They cannot increase the number of new DBE concessions; and (2) they cannot require current lessees to involve sublessees, joint venturers, or franchisees. This has the effect of keeping the level of DBE participation below 10 percent.

Under the proposal, airports would have an opportunity to increase the amount of DBE participation through the direct purchase of goods and services from DBE firms. The dollar amount of the direct purchases of goods and services from DBE's and management contracts or subcontracts with DBE's would be added to the total DBE participation in airport concessions as well as to the base—the same method used to calculate DBE participation under current procedures. However, the dollar amount of management contracts and subcontracts with non-DBE firms as well as the dollar amount of direct purchases from non-DBE firms would not be added to the base.

Under the proposal, airport sponsors would be able to count direct purchases made by non-DBE concessionaires toward their goals provided that they made "good faith efforts" to explore all available options to achieve compliance through direct ownership arrangements,

including subleases, joint ventures, and franchises. This "good faith efforts" test would not apply to the goods or services purchased or leased by non-DBE car rental firms from a DBE firm due to the special problems direct ownership arrangements pose for car rental agencies.

Finally, sponsors would be allowed to give "full faith and credit" to certifications made by other DOT recipients when the DBE firm is a management contractor or subcontractor or a provider of goods or services. The purpose of the certification process is to determine if an applicant does in fact satisfy both the size and ownership requirements for DBE status. The term "full faith and credit" means that the certifying agency (e.g., a recipient of Federal Highway Administration funding) would assume ultimate responsibility for the validity of the certification. The FAA is considering other ways to lower certification costs, such as permitting self-certification for smaller enterprises (which may be located off-site) and by extending the "full faith and credit" provision to include certifications made by non-DOT agencies (e.g., local governments). The public is invited to submit comments on reducing these costs.

The expansion in the potential kinds of activities eligible for DBE participation would increase the range of firms that could be certified as DBE's. If firms engaging in these activities were generally smaller than firms that are currently eligible for DBE participation, the number of certifications made by airport sponsors could increase, which could add to their overhead costs (i.e., time spent investigating potential DBE's to validate their eligibility). The FAA solicits information from the public regarding the expected impact of the proposal, if any, on the types of business arrangements that airport sponsors and concessionaires would likely choose for satisfying DBE goals.

This proposal is expected to promote economic efficiency. The expansion in the types of business operations that can be counted toward satisfying DBE goals as well as changes in the method airport sponsors may use for calculating DBE goal attainment described above should afford these sponsors greater flexibility. Sponsors would be able to involve DBE's in more facets of their overall business using a broader array of financial vehicles. They would presumably have a greater opportunity to minimize the risks of failure for both themselves and the DBE's. Both airport operators and concessionaires would have access to a wider range of business relationships with DBE's, thereby

affording them an opportunity to better control their risks. These risks tend to be higher in business partnerships, such as joint ventures.

A key advantage of these alternative business arrangements is that they would reduce potential losses incurred by airport sponsors and non-DBE concessionaires in the event of the failure of a DBE. All partners in joint ventures are financially liable for any business losses. Small businesses have traditionally experienced a considerably higher rate of failure than larger business enterprises, especially in the early years. If a non-DBE concessionaire has made a good faith but unsuccessful search for a viable DBE to joint venture, sublease, or franchise, the non-DBE still will have an opportunity to help meet the goals through the purchase of goods and services from DBE's. In addition, the non-DBE would be spared the legal costs of establishing a business partnership with a DBE that may not be ready for the competition of airport concession activity.

Similarly, an airport can augment its capacity to reach its goals through management contracts and subcontracts. Under appropriate circumstances, these offer a triple benefit: (1) They enlarge the pool of available DBE's; (2) some management contracts result in greater economic benefit to the airport than a concession arrangement; and (3) since the airport exercises greater control over management contracts than over concessions, in some situations the airport is in a better position to avert business failures. The FAA concludes that the proposal has some potential for reducing the costs of complying with the DBE Program.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities." Small entities include businesses, nonprofit organizations, and governmental jurisdictions.

The proposal affects airports classified under Standard Industrial Classification (SIC) 4582. The FAA's small entity size standards criterion defines a small airport as one owned by a county, city, town or other jurisdiction having a population of 49,999 or less. There are currently 418 primary non-military airports that are subject to the provisions of part 23. According to 1980 Census data, 108 of the 418 primary

non-military airports are owned by jurisdictions with populations of less than 50,000.

The proposed rule amendment is of a cost relieving nature and would therefore afford cost savings to airport sponsors. The impacts on the costs of complying with the DBE Program borne by individual airport sponsors are expected to be quite small, however. The FAA solicits comments from the operators of small airports (as defined above) so that the potential for differential impacts can be determined.

International Trade Impact

The proposed rulemaking action would affect only domestic airports. There is not expected to be any impact on international trade because these airports obviously do not compete with their foreign counterparts.

Issued this 17th day of September, 1993, at Washington, DC.

Federico Peña,
Secretary of Transportation.

List of Subjects in 49 CFR Part 23

Airport concessions, Disadvantaged business enterprise, Government contracts, Minority businesses, Reporting and recordkeeping requirements, Transportation.

The Proposal

Accordingly, the DOT proposes to amend subpart F of part 23 of the Regulations of the Office of the Secretary of Transportation (49 CFR part 23) as follows:

1. The title of subpart F would be revised to read as follows:

Subpart F—Participation by Disadvantaged Business Enterprise in Airport Concessions

PART 23—[AMENDED]

2. The authority citation for part 23 would be revised to read as follows:

Authority: Sec. 905 of the Regulatory Revitalization and Regulatory Reform Act of 1978 (45 U.S.C. 803); sec. 520 of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. App. 2219); sec. 19 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1615); sec. 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (49 U.S.C. App. 1601 note); sec. 505(d), sec. 511(a)(17), and sec. 511(h) of the Airport and Airway Improvement Act, as amended (49 U.S.C. App. 2204(d), 2210(a)(17), and 2210(h)); title 23 of the U.S. Code (relating to highways and traffic safety, particularly sec. 324 thereof); title VI of the Civil Rights Act (42 U.S.C. 2000d *et seq.*); Executive Order 12265; Executive Order 12138.

3. In § 23.89, the introductory text of the definitions of "affiliation" and

"concession," and the definition of "socially and economically disadvantaged individuals" would be revised, and a definition of "management contractor or subcontract" would be added alphabetically to read as follows:

§ 23.89 Definitions.

Affiliation has the same meaning the term has in regulations of the Small Business Administration, 13 CFR part 121, except that the provisions of § 121.401(l), "Affiliation under joint venture agreements," shall not apply to the definition used in this subpart. Except as otherwise provided in 13 CFR part 121 and in this section, concerns are affiliates of each other when, either directly or indirectly

* * * * *

Concession means a for-profit business enterprise, located on an airport subject to this subpart, that is engaged in the sale of consumer goods or services to the public under an agreement with the sponsor, another concessionaire, or the owner of a terminal, if other than the sponsor. Businesses which conduct an aeronautical activity are not considered concessionaires for purposes of this subpart. Aeronautical activities include scheduled and nonscheduled air carriers, air taxis, air charters, and air couriers, in providing passenger or freight-carrying services; fixed base operators; flight schools; and sky-diving, parachute-jumping, flying guide services, and helicopter or other air tours.

* * * * *

Management contract or subcontract means an agreement with a sponsor or a derivative subagreement under which a firm operates a business activity, the assets of which are owned by the sponsor. The managing agent generally receives, as compensation, a flat fee or a percentage of the gross receipts or profit from the business activity. For purposes of this subpart, the business activity operated by the managing agent must be located at an airport subject to this subpart and be engaged in the sale of consumer goods or services to the public.

* * * * *

Socially and economically disadvantaged individuals has the same meaning the term has in § 23.61, except that for purposes of this subpart, the presumption of social and economic disadvantage shall not be considered to be rebutted solely on the basis that the net worth of the owner of a firm

presumed to be disadvantaged exceeds \$750,000.

* * * * *

4. In § 23.93, paragraph (a)(1) and (a)(3)(i) would be revised to read as follows:

§ 23.93 Requirements for airport sponsors.

(a) *General requirements.* (1) Each sponsor shall abide by the nondiscrimination requirements of § 23.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by this subpart.

(2) * * *

(3) * * *

(i) "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23, subpart F. The concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23, subpart F.

* * * * *

§ 23.95 [Amended]

5. Section 23.95 would be amended by revising paragraphs (a) and (b)(2), adding paragraph (b)(5), revising paragraph (c), adding paragraph (f)(6), revising paragraph (g)(4), and revising paragraph (i) to read as follows: § 23.95 Elements of Disadvantaged Business Enterprise (DBE) concession plan.

(a) *Overall annual DBE goals.*

(1) The sponsor shall establish an overall goal for the participation of DBE's in concessions for each 12-month period covered by the plan. The goals shall be based on the factors listed in § 23.45(g)(5).

(2) Sponsors shall calculate the overall DBE goal as a percentage of one of the following bases:

(i) The estimated gross receipts that will be earned by all concessions operating at the airport during the goal period.

(ii) The total number of concession agreements operating at the airport during the goal period.

(3) The plan shall indicate which base the sponsor proposes to use in calculating the overall goals.

(4) Airport sponsors may establish an overall annual goal exceeding 10 percent.

(5) To the extent practicable, sponsors shall seek to obtain DBE participation in all types of concession activities and not

concentrate participation in one category or a few categories to the exclusion of others.

(6) Sponsors that employ the procedures of paragraph (a)(2)(i) of this section may add the following amounts to the total of DBE participation and to the base from which the overall percentage goal is calculated:

(i) The estimated dollar value of a management contract or subcontract with a DBE. (The dollar value of management contracts and subcontracts with non-DBE firms are not added to the base from which the overall percentage goal is calculated.)

(ii) Subject to the conditions set forth in paragraph (c)(1)(iv) of this section, the estimated dollar value of goods and services that a non-DBE concessionaire will purchase from DBE's and use in operating the concession.

(iii) The estimated dollar value of goods or services that a non-DBE car rental firm will purchase or lease from DBE's, including purchases or lease of vehicles, and use in operating the concession.

(7) Sponsors that employ the procedures of paragraph (a)(2)(i) of this section shall also:

(i) Use the net payment to the airport for banks and banking services, including automated teller machines (ATM) and foreign currency exchanges, in calculating the overall goals.

(ii) Exclude from the overall goal calculation any portion of a firm's estimated gross receipts that will not be generated from a concession activity.

Example. A firm operates a restaurant in the airport terminal which services the traveling public and under the same lease agreement, provides in-flight catering service to the air carriers. The projected gross receipts from the restaurant are included in the overall goal calculation, while the gross receipts to be earned by the in-flight catering service are excluded.

(iii) State in the plan which concession agreements, if any, do not provide for the sponsor to know the value of the gross receipts earned. For such agreements, the sponsor shall use net payment to the airport and combine these figures with estimated gross receipts from other agreements, for purposes of calculating overall goals.

(8)(i) Sponsors that will employ the procedures of paragraph (a)(2)(ii) of this section shall submit a rationale as required by § 23.99.

(ii) In calculating overall goals, these sponsors may add the number of management contracts and subcontracts with DBE's to the total of DBE participation and to the base from which the overall percentage goal is

calculated. Management contracts and subcontracts with non-DBE's shall not be included in this base.

(b) *Goal methodology.*

(1) * * *

(2) The plan shall provide information on other projected expenditures with DBE firms that the sponsor proposes to count toward meeting overall goals, including:

(i) Name of each DBE firm (if known).

(ii) Type of business arrangement (e.g. management contract, vehicle purchases, cleaning services).

(iii) Estimated value of funds to be credited toward the overall goals.

(iv) Identification of entity purchasing or leasing the goods or services from the DBE (i.e., the sponsor or name of non-DBE concessionaire).

(3) * * *

(4) * * *

(5) The plan shall include a narrative description of the types of efforts the sponsor intends to make, in accordance with paragraph (i) of this section, to achieve the overall annual goals.

(c) *Counting DBE participation toward meeting the goals.*

(1) If the sponsor is covered by paragraph (a)(2)(i) of this section, DBE participation shall be counted toward meeting the overall goals and any contract goals set under this subpart as follows:

(i) A sponsor or concessionaire may count toward its goal the total dollar value of the gross receipts earned by a certified DBE under a concession agreement.

(ii) A sponsor or concessionaire may count toward its goal a portion of the total dollar value of gross receipts earned by a joint venture under a concession agreement, equal to the percentage of the ownership and control of the DBE partner in the joint venture.

(iii) A sponsor or concessionaire may count toward its goal the total dollar value of a management contract or subcontract with a certified DBE (but not the value of the gross receipts of the business activity to which the management contract or subcontract pertains).

(iv) Except as provided in paragraph (c)(1)(v) of this section, a sponsor or non-DBE concessionaire may count toward its goal the total dollar value of purchases from certified DBE's of goods and services used in the concession, provided that the sponsor and concessionaire have complied with the good faith effort requirements set forth in paragraph (i)(2) of this section.

(v) A non-DBE car rental firm may count toward a contract goal set under § 23.97(b), the total value of the purchase or lease of goods and services

from a certified DBE, including purchases or leases of vehicles, that are used in the concession. A sponsor may count these same expenditures toward its overall goal.

(vi) A sponsor or concessionaire may count toward its goals only expenditures to DBE's that perform a commercially useful function, as defined in § 23.47(d), in the work of the contract.

(2) If the sponsor is covered by paragraph (a)(2)(ii) of this section, DBE participation shall be counted toward meeting the overall goals and any contract goals set under this subpart as follows:

(i) A sponsor or concessionaire may count toward its goal each concession agreement with a certified DBE.

(ii) A sponsor may count toward its goal each management contract or subcontract with a certified DBE.

(iii) A sponsor or concessionaire may count toward its goal only those agreements in which the DBE firm performs a commercially useful function, as defined in

§ 23.47(d), in the work of the contract.

* * * * *

(f) * * *

(6) The following additional guidelines apply to the certification of management contractors and subcontractors and to providers of goods or services located off airport property.

(i) A sponsor may give full faith and credit to the certification made by another DOT recipient.

(ii) *Reserved.*

(g) * * *

(4) Joint ventures described in § 23.53 (c) and (d) are eligible for certification as DBE's under this subpart.

(h) * * *

(i) *Good faith efforts.* (1) The sponsor shall make good faith efforts to achieve the overall goals of the approved plan. The efforts shall include:

(i) Locating and identifying DBE's who may be interested in participating as concessionaires;

(ii) Notifying DBE's and other organizations of concession opportunities and encouraging them to compete, when appropriate;

(iii) Informing competitors for concession opportunities of any DBE requirements during pre-solicitation meetings;

(iv) Providing information concerning the availability of DBE firms to competitors to assist them in meeting DBE requirements; and

(v) When practical, structuring contracting activities so as to encourage and facilitate the participation of DBE's.

(2) As a condition of counting the purchase of goods and services toward

DBE goals in accordance with paragraph (c)(1)(iv) of this section, the sponsor and concessionaire shall make good faith efforts to explore all available options to achieve, to the maximum extent practical, DBE participation through direct ownership arrangements, including, but not limited to, joint ventures and franchises. For purposes of this paragraph (i)(2), good faith efforts shall include, but not be limited to, those listed in paragraph (i)(1) of this section, which are made applicable, as appropriate, to concessionaires referenced in this section.

§§ 23.97, 23.99, 23.101, 23.103

[Redesignated as 23.99, 23.101, 23.103, 23.97, respectively.]

6. Sections 23.97, 23.99, 23.101 and 23.103 are redesignated as follows:

Old section	New section
23.97	23.99
23.99	23.101
23.101	23.103
23.103	23.97

7. Newly designated § 23.97 would be amended by redesignating paragraphs (a) and (b) as (a)(1) and (a)(2) respectively; by adding a heading for (a); and by adding new paragraphs (b) and (c) to read as follows:

§ 23.97 *Obligations of concessionaires and competitors.*

(a) *General.*

* * * * *

(b) *Provision for car rental firms.* (1) A sponsor may require a car rental firm to meet any requirement imposed under this subpart through the purchase or lease of goods or services from DBE's. In the event the sponsor requires the purchase or lease of goods or services from DBE's, a car rental firm shall be permitted to meet such requirement by including purchases or leases of vehicles from any vendor that qualifies as a DBE, as defined in this subpart.

(2) Nothing in this subpart shall require a car rental firm to change its corporate structure to provide for direct ownership arrangements in order to meet the requirements of this subpart. For purposes of this subpart, a change in corporate structure shall include a transfer of corporate assets or execution of a joint venture, partnership, or sublease agreement.

(c) *DBE's as prime concessionaires.* A sponsor is permitted to afford DBE firms opportunities to participate as prime concessionaires through direct contractual agreements with the sponsor.

8. Section 23.109 would be revised to read as follows:

§ 23.109 Compliance and enforcement.

(a) *Complaints.* Any person who believes that there has been a violation of this subpart may personally or through a representative, file a written complaint in accordance with FAA regulations 14 CFR part 13. The complaint must be submitted to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Enforcement Docket (AGC-10), 800 Independence Avenue, SW., Washington, DC 20591. Complaints which meet the requirements of 14 CFR part 13, shall be docketed and processed as formal complaints.

(b) *Compliance procedures.* In the event of noncompliance with this subpart by a sponsor, the FAA Administrator may take any action provided for in Section 519 of the Airport and Airway Improvement Act of 1982, as amended.

9. Section 23.111 would be amended by revising the heading; redesignating paragraph (a) as (a)(1) and paragraph (b) as (a)(2); designating the introductory text as paragraph (a); and adding new paragraphs (b) and (c) to read as follows:

§ 23.111 Effect of subpart.

(a) * * *
 (b) Nothing in this subpart shall preempt any State or local law, regulation, or policy enacted by the governing body of a sponsor, or the authority of any State or local government or sponsor to adopt or enforce any law, regulation, or policy relating to DBE's. In the event that a State or local law, regulation, or policy conflicts with the requirements of this subpart, the sponsor shall, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of this subpart.

(c) Nothing in this subpart prohibits a sponsor with its own legal authority to employ set-asides from using a DBE set-aside in the award of a concession. This subpart does not provide independent legal authority to employ set-asides. Sponsors shall not use group-specific set-asides in concessions.

10. Appendix A to subpart F would be amended by revising the heading as set forth below and adding a second category to the table as follows:

Appendix A to Subpart F—Size Standards for the Airport Concession Program

* * * * *

Other Participants

Management contractors:
 Parking lots \$3.5

Other Participants—Continued

Other	3.5
Automotive dealerships	To be defined.
Other providers of goods or services.	As defined in 13 CFR Part 121.

[FR Doc. 93-24265 Filed 10-5-93; 8:45 am]

BILLING CODE 4910-63-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB83

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule to Determine *Lepidium montanum* var. *stellae* (Kodachrome Pepper-grass) as an Endangered Species.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposed rule (57 FR 49671; November 3, 1992) to list a Utah plant, *Lepidium montanum* var. *stellae* (Kodachrome pepper-grass), to be an endangered species. Additional field research has provided new information on the abundance and distribution of *Lepidium montanum* var. *stellae*. It is now known to have a much larger population size, and it is more widely distributed. Hence, the Kodachrome pepper-grass is relatively secure from threats to its existence because of its larger numbers and greater range. The Service has determined that this species is not likely to become either endangered or threatened throughout all or a significant portion of its range in the foreseeable future, and it does not qualify for protection under the Endangered Species Act.

ADDRESSES: The file of this proposal is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address, telephone (801) 975-3620.

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service (Service) published a proposed rule to determine *Lepidium montanum* var.

stellae (Kodachrome pepper-grass) to be an endangered species on November 3, 1992 (57 FR 49671). This proposal was supported by biological information indicating the species was extremely limited in numbers (less than 1,000 plants) and that it was found only in restricted microhabitats (Franklin 1990). Because of this small population, a restricted distribution, and imminent threats to this known population (57 FR 49671), Service biologists and others (Welsh 1978) believed that it should be afforded protection of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

The Service published the proposed rule to determine *Lepidium montanum* var. *stellae* an endangered species using the best available information. Nine comments were received during the comment period. Six commenters supported the listing on the basis of the information supporting the proposed rule. One commenter opposed listing but provided no substantive rationale. The Bureau of Land Management and the State of Utah recommended that the Service conduct an additional review of *L. montanum* var. *stellae* before the promulgation of a final rule because a recent survey had documented additional populations of the plant. These populations were previously identified as the relatively common *L. montanum* var. *jonesii* and *L. montanum* var. *montanum*, but were subsequently identified as *L. montanum* var. *stellae* in the recent survey (Welsh and Thorne 1992).

The Service and Bureau of Land Management conducted a survey during the spring of 1993. This joint survey confirmed the additional populations of *Lepidium montanum* var. *stellae* found by Welsh and Thorne (1992), and additional data and estimates were obtained (Armstrong and England 1993). The range of *L. montanum* var. *stellae* was found to extend about 100 km (60 mi) in an area of central Kane County, Utah. Plants were common, but discontinuously distributed on highly gypsiferous soils of the Carmel and Moenkopi formations. Its population size was estimated to be in excess of 100,000 individuals (Armstrong and England 1993).

Finding and Withdrawal

Recent rare plant surveys have shown a much larger population size and distribution for *Lepidium montanum* var. *stellae* (Welsh and Thorne 1992). In addition to the population in the Kodachrome Basin, it occurs on the Skutumpah Bench and in the Johnson Wash drainage; all in Kane County, Utah. The known population size of *L.*

montanum var. *stellae* has been increased by a hundredfold, from 1,000 to over 100,000 plants, and its known range of 100 km (60 mi) greatly exceeds the range described in the previous distributional information used by the Service in its proposed rule (Welsh and Thorne 1992; Armstrong and England 1993).

The Service previously determined that potential mineral development and recreational activity posed a threat to *L. montanum* var. *stellae* populations. Although some threat still exists to individual plants of this species, the number and size of the populations and their extensive range provides insulation from such threats.

The Service has reviewed the status of *L. montanum* var. *stellae* relative to the five factors in section 4(a) of the Act and has determined that it is not likely to become either endangered or threatened throughout all or a significant portion of its range in the foreseeable future, and it does not qualify for protection under the Act. Therefore, in compliance with section 4(b)(6)(B)(ii) of the Endangered Species Act (Act) of 1973, as amended, the Service finds that there is not sufficient evidence to justify the proposed listing action and withdraws its proposed rule of November 3, 1992 (57 FR 49671), to list *Lepidium montanum* var. *stellae* as an endangered species. As a result of this determination, the Service will remove this species from category 1 in the next plant notice of review and place it in category 3C indicating that it has proved to be more abundant than previously believed.

References Cited

- Armstrong, L. and J.L. England. 1993. Status survey for *Lepidium montanum* var. *stellae*. Bureau of Land Management and the U.S. Fish and Wildlife Service, Salt Lake City, Utah. 3 pp.
- Franklin, M.C. 1990. Report for 1989 challenge cost share project USDI Bureau of Land Management, target species: *Xylorhiza cronquistii* (Cronquist woodyaster), *Lesquerella tumulosa* (Kodachrome bladderpod), *Lepidium montanum* var. *stellae* (Kodachrome pepper-grass). Utah Natural Heritage Program, Salt Lake City. 11 pp.
- Welsh, S.L. and K.H. Thorne. 1992. Report of Bureau of Land Management Sensitive Plant Species, Western Kane County, Utah. Unpublished report prepared for the Bureau of Land Management, Salt Lake City, Utah. iv+56 pp.

Authors

The primary authors of this notice are John L. England, U.S. Fish and Wildlife Service, Salt Lake City, Utah (801/975-3630), and Harold M. Tyus, U.S. Fish and Wildlife Service, Denver Regional

Office, Denver, Colorado (303/236-7398).

Authority

The Authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: September 23, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.
[FR Doc. 93-24382 Filed 10-5-93; 8:45 am]
BILLING CODE 4310-65-P

50 CFR Part 17

RIN 1018-AC09

Endangered and Threatened Wildlife and Plants; Proposal To Determine the Plant *Pediocactus Winkleri* (Winkler Cactus) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to determine *Pediocactus winkleri* (Winkler cactus) an endangered species. *P. winkleri* is endemic to a specific soil type in lower elevations of the Fremont River and Muddy Creek drainages of south-central Utah. Six populations of *P. winkleri* cactus are known. These populations total about 3,500 plants that grow on about 80 hectares (200 acres) of habitat. *P. winkleri* is threatened by plant collecting and by habitat disturbances due to mining, recreation, and livestock. Listing *P. winkleri* as an endangered species would provide protection under the authority of the Endangered Species Act of 1973, as amended.

DATES: Comments from interested parties must be received by December 6, 1993. Public-hearing requests must be received by November 22, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours.

FOR FURTHER INFORMATION CONTACT: John L. England (see ADDRESSES section above) at (801) 975-3630.

SUPPLEMENTARY INFORMATION:

Background

Pediocactus winkleri Heil (Winkler cactus) was discovered by Agnes Winkler in the early 1960's. It was first

described in the scientific literature by Dr. Kenneth Heil from specimens he collected in the vicinity of Notom, Utah, during 1977 and 1978 (Heil 1979). *Pediocactus* includes *P. winkleri* and seven other species (Arp 1972; Heil et al. 1981; Benson 1982). These extant species of *Pediocactus* appear to be relics of a larger and more widespread genus whose distribution may have been fractured by climatic changes (Benson 1982).

P. winkleri is a small globose cactus with stems 2.5 to 6.4 cm (1 to 2.5 in) long, and up to 5.1 cm (2 in) in diameter. It has spine clusters of 9 to 11 small radial spines with fine, woolly hairs at the base. The peach or pink colored flowers of *P. winkleri* are urn shaped, 1.8 to 2.5 cm (0.7 to 1 in) long and 1.8 to 3.8 cm (0.7 to 1.5 in) in diameter. The fruit is barrel shaped with shiny black seeds (Heil 1979; Heil et al. 1981; Welsh et al. 1987).

P. winkleri occurs in six populations that total about 3,500 plants (Heil 1984; Neese 1987; Kass 1990; U.S. Fish and Wildlife Service 1990). *P. winkleri* is a plant of *Atriplex* (saltbush)-dominated desert shrub communities, and it usually grows on the tops and sides of rocky alkaline hills or benches (Heil 1984). It grows in soils that have a silt or clay component and that are primarily derived from the Dakota geologic formation (Neese 1987).

The range of *P. winkleri* forms a narrow arc which extends from Notom in central Wayne County to Hartnet Draw in southwestern Emery County, Utah. The range of the plant extends for about 48 km (30 mi), but Service biologists estimate that the actual area occupied by the plant is about 80 hectares (200 acres). About 500 plants grow on Capitol Reef National Park (Park), but the remainder grow on lands managed by the Bureau of Land Management (BLM) that lie just east of the Park.

The range of *P. winkleri* approaches populations of the listed endangered cactus *P. despainii* (San Rafael cactus). *P. despainii* and *P. winkleri* are presently classified as separate species, but phylogenetically, these two plants may be closely related. It is possible that future taxonomic revisions of *Pediocactus* may classify both plants as subspecies of *P. winkleri*, the first of the two species to be described in the scientific literature (Heil 1979; Welsh and Goodrich 1980). However, attempts to artificially hybridize the two species in domestic gardens have not been successful (Kenneth Heil, San Juan College, New Mexico, pers. comm., 1993), suggesting that the present

taxonomic classification of this species is accurate.

In this proposed listing action, the Service recognizes *P. winkleri* as a species distinct from *P. despainii*. If these species are later recognized as subspecies, their designation as endangered species will remain valid because section 3(15) of the Endangered Species Act (Act), as amended (16 U.S.C. 1531 *et seq.*), permits the listing of subspecies.

Federal Government actions relating to this species began with section 12 of the Endangered Species Act of 1973 which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered endangered, threatened, or extinct. This report, House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) formally accepting the report as a petition under section 4(c)(2) of the Act (now section 4(b)(3)) and acknowledging its intention to review the taxa for possible listing.

P. winkleri was not included in the 1975 notice, but it was included as a new candidate in a notice published in the Federal Register of December 15, 1980 (45 FR 82480). *P. winkleri* was included as a category 1 species, i.e., it was considered a species for which the Service had substantial information on its biological vulnerability and threats to its existence to support a proposal to list it as an endangered or threatened species.

Section 4(b)(3)(B) of the 1982 amendments to the Act required the Secretary of the Interior to make a finding within 1 year of receiving a listing petition as to whether the listing is warranted, warranted but precluded by other pending proposals of higher priority, or not warranted. In the case of a "warranted but precluded" finding, another finding is required each year thereafter until the petitioned taxa are either proposed for listing or a final "not warranted" finding is made.

Section 2(b)(1) of the 1982 amendments further required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. To facilitate making the necessary annual "warranted but precluded" findings on several thousand plant taxa, the Service made an administrative decision to treat all the plant candidates in category 1 and category 2 at that time as if their listings had been petitioned on October 13, 1982. This included species such as *P. winkleri* which were included as candidates in the 1980 notice of review but which were never the subject of a

petition. As a result of the administrative decision to treat these species as petitioned, *P. winkleri* was included in annual warranted but precluded petition findings, the first published on October 13, 1983, and then in each successive year thereafter.

In a 1983 supplemental notice (48 FR 53640), the Service changed the status of *P. winkleri* from category 1 to category 2 as a result of a careful review of status information. Category 2 comprises taxa for which the Service has information indicating the appropriateness of a proposal to list the taxa as endangered or threatened, but for which more substantial data are needed on biological vulnerability and threats.

On September 27, 1985, the Service published a notice of review (50 FR 39526) replacing the 1980 notice and its 1983 supplement. This notice of review included *P. winkleri* as a category 1 species, a change resulting from a status survey for *P. winkleri* (Heil 1984) which documented vulnerability and threats to this species. The Service published its last notice of review on February 21, 1990 (55 FR 6184), which included *P. winkleri* as a category 1 species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *P. winkleri* Heil (Winkler cactus) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The small, restricted populations of *P. winkleri* make it highly vulnerable to human-caused environmental disturbances. Although the exact size of historical range of this species is unknown, its known habitat has been adversely affected by off-road vehicles and trampling by livestock (Heil 1984, 1987; Neese 1987; Bruce MacBryde, U.S. Fish and Wildlife Service, pers. comm., 1990). The plant shrinks into the ground during portions of the year, and this shrinking affords it some protection from light trampling by humans and soft-wheeled vehicles. However, the plant forms buds at ground level in autumn that persist over the winter and become flowers the following spring (Heil *et al.* 1981). These flowering buds

are very vulnerable to surface disturbance, and if damaged, reproductive capacity of the plant is lost or diminished.

One of the larger populations of *P. winkleri* is located on sparsely vegetated slopes of the oystershell reef near Notom, Utah, an area used as an off-road vehicle recreation area. Off-road vehicle use and livestock trampling has destroyed plants in this population and has had negative impacts on its habitat within the Park (Heil 1984, Heil 1987, Neese 1987). The remaining habitat of *P. winkleri* outside of the Park also is experiencing impacts from off-road vehicle activity.

Livestock trampling has affected all the *P. winkleri* populations in and near the Park (the Park is not closed to livestock grazing). Human foot traffic and vehicular traffic off established roadways within the Park also is affecting the *P. winkleri* population there (Heil 1987).

P. winkleri habitat may contain uranium ore and gypsum deposits. Surface disturbance by annual assessment work on mineral claims for uranium, gypsum, and other minerals has the potential for adversely impacting this species and its habitat. In addition, mineral extraction poses a great threat to the plant in some areas.

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

P. winkleri is an attractive small cactus, especially when it is in flower. It is sought by collectors, and it has been commercially exploited for horticultural purposes. In the Notom area, it is estimated that about 80 percent of the plants have been taken by plant collectors in the last 10 years.

Cactus collectors are very active in the Colorado Plateau, and they often go from the habitat of one species of *Pediocactus* to the next so they can collect a complete set (Heil, pers. comm., 1992; McBryde, pers. comm., 1992).

C. Disease or Predation

The effect of livestock grazing on *P. winkleri* is unknown. Because of its small size and the shortness of its spines, this species of cactus is less protected from animals than other, spinier cactus species. The effects of livestock grazing on desert vegetation may produce indirect impacts on *P. winkleri* populations. This species is susceptible to infestations of beetle larvae (Service 1990).

D. The Inadequacy of Existing Regulatory Mechanisms

No Federal or State laws or regulations directly protect *P. winkleri* or its habitat. This plant is found scattered over desolate country, and this makes protecting it from collectors very difficult, even in the Park. Livestock grazing continues in the Park and in other areas with a resultant continued loss of plants.

The species is listed in Appendix 1 of The Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES import permits and export permits are required for international trade in Appendix I species and permits generally are not allowed for primarily commercial shipments.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The very low population size and restricted habitat of *P. winkleri* makes the species vulnerable to human disturbances to its habitat. These disturbances also can exacerbate catastrophic climatic disturbances to the plant. It is not known if its populations are at levels which would ensure their continued long-term existence. However, its numbers are sufficiently small that future losses may soon result in loss of population viability.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *P. winkleri* as an endangered species. In making this determination, the Service has decided that listing this species as endangered would be more appropriate than listing this species as threatened because *P. winkleri* is in danger of extinction throughout all or a significant portion of its range. With less than 3,500 known plants in 6 known locations, further taking by plant collectors could significantly lower its numbers. Surface disturbances are impacting the ecosystem in which the species occurs and are likely to increase in the future, especially recreational off-road vehicle use. The plant is very rare, and only about 500 plants occur within the Park, where it is subject to general collecting prohibition. For the reasons given below, it would not be prudent to propose critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the

Secretary of the Interior propose critical habitat at the time a species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *P. winkleri*.

As noted in Factor B, "Summary of Factors Affecting the Species", *P. winkleri* is threatened by taking, an activity only regulated by the Act with respect to endangered plants in cases of removal and reducing to possession from areas under Federal jurisdiction; malicious damage or destruction to endangered plants on Federal lands; and removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps (a requirement if critical habitat is determined) would make *P. winkleri* more vulnerable to taking and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for *P. winkleri*.

All appropriate parties have been notified of the location and importance of protecting habitat of this species. Protection of *P. winkleri* habitat will be addressed through the recovery process and through Section 7(a) of the Act, as amended, which requires Federal Agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal Agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal Agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal Agencies to confer informally with the Service on any action that is likely to

jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal Agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service.

Most of the population of *P. winkleri* is on Federal lands that are managed by the BLM, with the remainder on the Park, which is managed by the National Park Service. Both of these Federal Agencies would be responsible for insuring that all activities and actions on lands they manage are not likely to jeopardize the continued existence of *P. winkleri*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, the Act prohibits the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

Because of horticultural interest in *P. winkleri*, trade permits may be sought but few, if any, trade permits for plants of wild origin would ever be issued. Plants of cultivated origin are available and permits may, under certain circumstances, be issued for trade in those. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive,

room 432, Arlington, Virginia 22203, telephone (703) 358-2104.

On July 29, 1983, *P. winkleri* was included in Appendix I of CITES. The effect of this action is that both export and import permits are generally required before international shipment of this species may occur. Such shipment is strictly regulated by CITES party nations to prevent effects that may be detrimental to the species' survival. Generally, the import or export cannot be allowed if it is for primarily commercial purposes. If plants are certified as artificially propagated, however, international shipment requires only export documents under CITES, and commercial shipments may be allowed.

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 regarding any aspect of this proposal are hereby solicited from the public, other governmental agencies, the scientific community, industry, or other interested parties. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *P. winkleri*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the

Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Salt Lake City, Utah (see ADDRESSES section above).

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 Act, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is John L. England, Botanist, U.S. Fish and Wildlife Service, Salt Lake City, Utah, telephone (801) 975-3630 (see ADDRESSES above).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes 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.

2. § 17.12(h) is amended by adding the following, in alphabetical order under Cactaceae, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.
 * * * * *
 (h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cactaceae—Cactus family:						
<i>Pediocactus winkleri</i>	Winkler cactus	U.S.A. (UT)	E	.....	NA	NA

Dated: September 24, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93-24384 Filed 10-5-93; 8:45 am]

BILLING CODE 4310-66-P

50 CFR Part 17

RIN 1018-AC00

Endangered and Threatened Wildlife and Plants; Public Hearing and Extension of Public Comment Period on Proposed Endangered Status for Four Plants and Threatened Status for Four Plants From Vernal Pools From the Central Valley of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), announces a public hearing and extension of comment period on the proposed determination of endangered status for *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass), *Orcuttia pilosa* (hairy Orcutt grass), *Orcuttia viscida* (Sacramento Orcutt grass), and *Tuctoria greenii* (Green's tuctoria) and threatened status for *Castilleja campestris* ssp. *succulenta* (fleshy owl's-clover), *Chamaesyce hooveri* (Hoover's spurge), *Neostapfia colusana* (Colusa grass), and *Orcuttia tenuis* (slender Orcutt grass). During the public hearing, the Service will allow all interested parties to present oral testimony on the proposed rule. Written comments on the proposal will be accepted until November 18, 1993.

DATES: The public hearing will be held from 6 to 8 p.m. on November 3, 1993, in Sacramento, California. The Service will accept written comments on the proposed rule until November 18, 1993. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Hyatt Regency Hotel, 1209 "L" Street, Sacramento, California. Written comments and materials concerning this proposal should be sent to the Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Ken Fuller (see ADDRESSES section) or at 916-978-4866.

SUPPLEMENTARY INFORMATION:

Background

Castilleja campestris ssp. *succulenta*, *Chamaesyce hooveri*, *Neostapfia colusana*, *Orcuttia inaequalis*, *Orcuttia pilosa*, *Orcuttia tenuis*, *Orcuttia viscida*, and *Tuctoria greenii* are annual species restricted to vernal pools and swales in the Central Valley of California. These 8 plants are found sporadically in 14 counties. These plants face ongoing threats from one or more of the following: commercial, residential or agricultural development, flood control projects, hydrological changes in vernal pool and swale habitat, overgrazing, competition from nonnative weeds, landfill projects, road developments, and inadequate regulatory mechanisms. A proposal to list these eight plants was published in the Federal Register on August 5, 1993 (58 FR 41700).

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. In response to the proposed rule, William Hazeltine, Environmental Consultant, Oroville, California, requested a public hearing in a letter dated August 16, 1993. As a result, the Service has scheduled a public hearing on November 3, 1993, from 6 to 8 p.m. at the Hyatt Regency Hotel, in Sacramento, California. Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments carry the same weight as oral comments. The comment period closes on November 18, 1993. Written comments should be submitted to the Service in the ADDRESSES section.

Author

The primary author of this notice is Ken Fuller (see ADDRESSES section).

Authority

The authority for this action is the Endangered Species Act of 1973 (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.

Dated: September 28, 1993.

William E. Martin,

Acting Regional Director.

[FR Doc. 93-24499 Filed 10-5-93; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 93094-3246; ID 000983A]

RIN 0648-AE58

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 5 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). Amendment 5 would impose a 3-year moratorium on additional participants in the Gulf of Mexico reef fish fishery who may use fish traps; require each fish trap or string of traps to be marked with a floating buoy; require that fish traps be returned to port at the completion of the tending vessel's trip; increase the minimum allowable size of red snapper, currently 13 inches (33.0 centimeters (cm)), in one-inch increments every other year commencing January 1, 1994, until the minimum allowable size is 16 inches (40.6 cm), effective January 1, 1998; require all finfish, other than bait and oceanic migratory species, possessed in the exclusive economic zone (EEZ) to be maintained with head and fins intact through landing; close Riley's Hump, southwest of Dry Tortugas, Florida, to all fishing during May and June each year; create special management zones (SMZs) in the EEZ off Alabama in which fishing for reef fish would be limited to hook-and-line gear having no more than three hooks per line and spearfishing gear; and add the establishment or modification of SMZs, and the gear allowed in each, to the management measures that may be adjusted via a framework procedure.

In addition, NMFS proposes to amend the regulations to add the boundary between the Gulf of Mexico EEZ and the Atlantic Ocean EEZ; remove the procedures for obtaining permits by persons fishing from structures; clarify

the provisions relating to endorsements on permits; remove the specific data to be submitted on written reports; prohibit the attempted purchase, barter, trade, or sale of reef fish caught under the bag limits; add two general prohibitions that are necessary for effective enforcement; clarify an exception to the requirement for fish to be maintained with head and fins intact when such reef fish are held on board the harvesting vessel for consumption at sea; remove unnecessary language regarding the conditions for possessing more than one day's bag limit; clarify that the bag limits for reef fish may apply not only aboard a vessel that fishes in the EEZ, but also aboard a fishing vessel that possesses reef fish in the EEZ; and otherwise correct and clarify the regulations and conform them to current usage. The intended effects of this rule are to reduce fishing mortality of the reef fish resources so that they may be protected and rebuilt, to enhance enforceability of the regulations, and to otherwise clarify the regulations.

DATES: Written comments must be received on or before November 15, 1993.

ADDRESSES: Comments on the proposed rule should be sent to Robert Sadler, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Requests for copies of Amendment 5, which includes a supplemental environmental impact statement/regulatory impact review/initial regulatory flexibility analysis (SEIS/RIR/IRFA) on this action, and for copies of a minority report submitted by four members of the Gulf of Mexico Fishery Management Council (Council), should be sent to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813-893-3161.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Management Measures in Amendment 5

Moratorium on Fish Trapping

The use of fish traps in the Gulf of Mexico may be expanding, in terms of number of participants and geographical range, with little or no data available to assess catch composition or ecological

effects of trap deployment. Although the number of reef fish vessels is temporarily capped by the current moratorium on new permits in the fishery, Amendment 5 proposes to freeze participation in the fish trap part of the fishery at current levels and participants until the Council obtains better information on the trap fishery's ecological impacts.

Amendment 5 proposes that a fish trap endorsement on a reef fish permit not be issued or renewed unless the vessel for which the endorsement is requested and its current owner have a record of the landing of reef fish from fish traps in the EEZ of the Gulf of Mexico during 1991 or 1992, as reported on fishing vessel logbooks received by the Science and Research Director on or before November 19, 1992. NMFS' permit data indicate that of the approximately 283 vessels that hold permits that authorize the use of fish traps, approximately 128 had reported landings of reef fish from fish traps before the cutoff date, and therefore would be able to continue to fish traps if Amendment 5 is implemented. Fish trap endorsements would not be transferable upon sale of the permitted vessel, but an owner could transfer an endorsement to another vessel owned by the same entity.

Buoys on Fish Traps

Currently, fish traps may be marked by a buoy that is submerged until automatically released with a timed pop-up device. The use of such devices makes it difficult to enforce the prohibition on use of fish traps in the stressed area. Amendment 5 would require a surface buoy for each trap, or each end of a string of traps, thus enhancing enforcement and surveys of fish trapping effort.

Tending Traps

Currently, the construction requirements for fish traps and the limitation of 100 traps per vessel are difficult to enforce, in part because traps may be left at sea between trips. In addition, leaving traps at sea between trips contributes to lost traps and "ghost fishing" of such traps. To address these problems, Amendment 5 would require that all traps be returned to port on completion of each trip.

Increase Red Snapper Minimum Size Limit

Red snapper are currently overfished and are under a rebuilding program. To assist in the rebuilding program and to increase the yield per recruit, Amendment 5 proposes incremental increases in the minimum allowable

size limit for red snapper, commencing January 1, 1994. At that time, the current minimum size limit of 13 inches (33.0 cm), total length, would be increased to 14 inches (35.6 cm). On January 1, 1996, the minimum size limit would be increased to 15 inches (38.1 cm), and on January 1, 1998, it would be increased to 16 inches (40.6 cm).

The three-step incremental schedule for increasing the minimum size limits would provide advance notice for planning purposes and would minimize adverse socioeconomic impacts to the commercial and recreational fishing sectors. There were relatively strong year classes of red snapper in 1989 and 1990. Fish in both of these year classes will be above the increased minimum allowable size limits proposed in Amendment 5. Accordingly, the proposed increases are not likely to prevent harvest of total allowable catches in 1994 and succeeding years.

Head and Fins Intact

Minimum size limits are in effect for certain species of reef fish. Minimum size limits are in terms of total length, except for amberjack, which is in terms of fork length. In either case, head and caudal fin must be attached in order to determine compliance with the minimum size limits. Accordingly, the regulations require that a reef fish for which there is a minimum size limit must be maintained through landing with head and fins intact.

The head and fins are being removed from some reef fish that are subject to minimum size limits, and such reef fish are being mixed with other finfish for which there are no size limits. Since species identification is difficult when head and fins have been removed, enforcement of the minimum size limits is adversely affected and quota monitoring may be adversely affected.

Amendment 5 would require that all finfish possessed in the EEZ, and all finfish taken from the EEZ, be maintained with head and fins intact through landing. Thus, species subject to a minimum size limit may be ascertained and length measurements taken when appropriate. Amendment 5 proposes exceptions for the oceanic migratory species, namely, billfish, shark, swordfish, and tuna species, all of which are regulated by NMFS, and for bait. However, the regulations at 50 CFR 644.21(c) require that billfish, that is, sailfish, white marlin, blue marlin, and longbill spearfish, must have head, fins, and bill intact through landing. Accordingly, in this proposed rule, only shark, swordfish, tuna species, and bait are excepted from the requirement that all finfish must be maintained with

head and fins intact through landing. Shark, swordfish, and tuna species are readily distinguishable, and most commercial bait is in strips or pieces. Thus, these specific exceptions are not expected to cause problems ascertaining the species subject to minimum size limits.

Mutton Snapper Spawning Aggregation Closure

Schools of medium-sized mutton snapper aggregate for spawning in Riley's Hump, an area in the Gulf of Mexico EEZ approximately 60 miles west of Key West, Florida. The peak spawning months are May and June. In that area during spawning, the species is especially vulnerable to harvest. Targeting mutton snapper in other areas during their spawning aggregations is believed to have led to a decline in abundance of mutton snapper in those areas.

In response, the Gulf Council is proposing a closure of the Riley's Hump mutton snapper aggregation area during May and June of each year. Closure of spawning aggregation areas has been effective in managing other fisheries. It has been implemented in the reef fish fishery off Puerto Rico and the U.S. Virgin Islands.

Special Management Zones (SMZs) off Alabama

The Alabama Department of Conservation and Natural Resources has a Corps of Engineers permit for three offshore tracts located in the EEZ generally southeast of the mouth of Mobile Bay. Under the permit, low profile, unmarked artificial reefs (ARs) may be constructed within the tract. Recreational fishermen, charter vessel fishermen, and a few full-time commercial fishermen have established a total of more than 5,000 individual ARs in the tracts. Sixty to 70 percent of the ARs have been constructed by persons in the charter vessel or headboat business. In addition, the State has established ARs consisting of liberty ships, barges, bridge rubble, and toppled oil platforms. The tracts total approximately 820 square miles (2124 square kilometers (km)), composed of Tract A, 100 square miles (259 square km), Tract B, 360 square miles (932 square km), and Tract C, 360 square miles (932 square km).

Fishing on the ARs has traditionally been by rod and reel. More recently, commercial bandit rigs have been used. Except for the southern tip of Tract C, the tracts are inside the longline and buoy gear restricted area, so that such gear may not be used to fish for reef fish in almost all of the tracts.

During 1992, when a 1,000-pound (453.6-kg) trip limit applied to the commercial harvest of red snapper, numerous vessels with bandit rigs, and some with jigging rigs, reportedly harvested red snapper from the ARs in these tracts. Presumably, these vessels targeted the ARs because of their proximity to ports, which allowed more frequent trips during the short period that the trip limit was in place. Red snapper trip limits were utilized in 1993 and will be in effect in 1994.

The Council determined that the ARs cannot support a major commercial effort, such as occurred in 1992, but can support small, localized commercial effort by the fishermen who contributed to the construction of the ARs. These fishermen reportedly carefully regulate their harvest, fishing each reef at infrequent intervals to conserve the population and to allow fish to grow to larger sizes.

Amendment 5 states that the large number of ARs in the tracts, where natural reefs are virtually absent, and the fishing practices reportedly used on the ARs by persons constructing and fishing them, has resulted in a large standing stock of reef fish in the tracts, especially of red snapper. A study of the area suggests that the ARs are responsible for increased production of red snapper, rather than mere congregation. Other, more general, studies are inconclusive as to production versus congregation of reef fish on ARs. The reported conservative fishing practices on and increased production of the ARs are consistent with the Council's program for rebuilding the stock of red snapper.

Alabama requested that the tracts be given status as SMZs, consistent with the State's artificial reef program, with gear restrictions to prevent pulse overfishing under trip limits, i.e., unusually rapid rate of harvest. Accordingly, Amendment 5 proposes that the tracts be designated as SMZs in which fishing for reef fish is restricted to hook-and-line gear having no more than three hooks per line and spearfishing gear, considered to be the equivalent of one hook. Amendment 5 concludes that the proposed gear limitations in the SMZs would prevent pulse overfishing and would preserve the ARs for the use of the fishermen for whom they were constructed.

Amendment 5 also proposes to modify the seaward boundary of the longline and buoy gear restricted area so that all of Tract C is included in the restricted area. Longline and other gear with more than three hooks per line would be allowed in the SMZs to fish for species other than reef fish, but

persons aboard vessels using such gear would be limited to incidental catches of reef fish not exceeding the bag limits for those reef fish for which there are bag limits and to 5 percent of all fish aboard for other reef fish. Such limitations in the SMZs are consistent with the limitations currently applicable to the use of longline or buoy gear in other parts of the longline and buoy gear restricted area.

The coordinates of the SMZs proposed in this rule differ slightly from those contained in Amendment 5. The original Alabama AR tracts were created in accordance with Corps of Engineers permits that specified the tracts in terms of loran readings. The conversion of those loran readings to geographical coordinates has changed based on survey results. The coordinates in this proposed rule are the original loran readings as plotted on the current chart, and were determined by the Coast and Geodetic Survey, National Ocean Service, NOAA. The coordinates in this proposed rule have been coordinated with the Alabama Department of Conservation and Natural Resources.

Framework Procedure for Future SMZs

Amendment 5 proposes the following framework regulatory amendment procedure for designation of future SMZs. The intent is to provide an abbreviated process whereby SMZs may be established on a more timely basis.

The holder of a Corps of Engineers permit for an AR or fish attraction device (FAD) may request the Council to designate the AR or FAD, and an appropriate surrounding area, as an SMZ in which fishing gear is regulated so as to be compatible with the most effective use of the area. A monitoring team, composed of members of the Council staff, members of the Fishery Operations Branch, Southeast Regional Office, and the Southeast Fisheries Science Center, NMFS, and other members appointed by the Council, would evaluate and report each request considering the following criteria: (1) Fairness and equity of proposed rules; (2) conservation of the resource; (3) avoidance of excessive shares; (4) consistency with the objectives of the FMP, the Magnuson Act, and other applicable law; (5) consideration of the natural bottom in and surrounding potential SMZs and impacts on historical uses; (6) environmental impacts and cumulative impacts on the environment of each SMZ, after consideration of the environmental assessment prepared by the Corps of Engineers in issuing the permit for the reef site.

The Council's Advisory Panel (AP) and/or Scientific and Statistical Committee (SSC) would review the monitoring team's report and associated documents and advise the Council. The Council Chairman could also schedule one or more public hearings near the area affected.

After reviewing the monitoring team's report, supporting data, AP/SSC advice, public comments, and other relevant information, the Council could recommend to the Director, Southeast Region, NMFS (RD), that an SMZ with appropriate restrictions on fishing be approved. Such a recommendation would be accompanied by all relevant background data.

If the RD rejected the Council's recommendation, he would provide the Council with his reasons for rejection. If the RD concurred with the Council's recommendation, he would draft and forward an appropriate proposed rule for publication in the *Federal Register*. A reasonable period for public comment, consistent with the urgency of the need to implement the management measures, would be provided before final action was taken.

Availability of Amendment 5

Additional background and rationale for the measures discussed above are contained in Amendment 5, the availability of which was announced in the *Federal Register* (58 FR 48502, September 16, 1993).

Comments Requested

While NMFS is inviting comments on all of the measures in Amendment 5, comments are specifically invited on the following concerns which have been raised regarding the proposed SMZs. (1) What are the effects of establishing areas totaling approximately 820 square miles (2,124 square km) in which fishing under the commercial allocations for reef fish would be severely limited? (2) What are the effects of the three hooks per line limit on recreational and commercial user groups? (3) What are the effects on the rebuilding plan of increasing the availability of red snapper to the recreational fishery, particularly the recreational fishery off Alabama? (4) Are the proposed SMZs consistent with the criteria under the proposed framework procedure for adding SMZs and, if not, should they be consistent?

Minority Report

A minority report signed by four Council members raised numerous objections to most of the management measures in Amendment 5 based on alleged unfairness to and negative

impacts on the commercial fishery. Copies of the minority report are available (see ADDRESSES). The final rule will address the concerns of the minority report and respond to comments on the proposed rule received by NMFS during the 45-day public comment period.

Additional Measures Proposed by NMFS

In addition to the measures contained in Amendment 5, NMFS proposes the following changes.

For ease of reference, NMFS proposes to include in the purpose and scope section of the regulations (50 CFR 641.1) the boundary between the Gulf of Mexico EEZ and the Atlantic Ocean EEZ. Specification of the boundary is essentially as it is codified at 50 CFR 601.11(c). In addition, that portion of the boundary near Dry Tortugas, and the extent of state waters around Dry Tortugas, would be added to figures 4 and 5, which show the seaward limits of the stressed area and of the longline and buoy gear restricted area, respectively.

NMFS has not issued any permits for fishing from structures. Under the current moratorium on reef fish permits, and the moratorium on fish trap endorsements proposed in Amendment 5, no permits for fishing from structures would be issued. Accordingly, NMFS proposes to remove from the regulations the provisions for permits for persons fishing from structures.

For uniformity of treatment, NMFS proposes to make the provisions regarding applications for, display of, and revocation of permits applicable to endorsements on such permits.

For simplicity, NMFS proposes to remove from the regulatory text specification of data that are to be submitted in written reports by owners/operators of fishing vessels and by dealers. The specific data to be reported are contained with the required reporting forms.

As an aid to enforcement of the current prohibition on purchase, barter, trade, or sale of reef fish possessed under the bag limits, NMFS proposes also to prohibit attempts to purchase, barter, trade, or sell such reef fish.

NMFS proposes to add prohibitions regarding (1) false statements to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a reef fish; and (2) interference, obstruction, delay, or prevention of an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

These additions would aid in enforcement of the regulations.

In the preamble to the final rule that implemented the requirement that a reef fish be maintained with head and fins attached through landing, NMFS stated, "The regulations are not intended to preclude consumption aboard a vessel of legal-sized reef fish taken under the bag limits." (55 FR 2083, January 22, 1990). NMFS has found that this exception is not clearly stated in the regulations. Accordingly, NMFS proposes that legal-sized finfish that do not have head and fins intact may be possessed in the EEZ aboard the harvesting vessel in a quantity not exceeding any applicable bag limit and not exceeding 1.5 pounds (680 gm) per person on board, providing the vessel is equipped to cook such reef fish on board. NMFS believes that (1) 1.5 pounds per person is sufficient to provide one meal for each person on board; and (2) this clarification is in accord with the intent of the Council, as expressed in Amendment 1 to the FMP.

In the charter vessel and headboat exception to the general rule prohibiting possession of more than one daily bag limit of reef fish (50 CFR 641.24(c)), there is a condition that the charter vessel or headboat must have two licensed operators aboard "as required by the U.S. Coast Guard for trips of over 12 hours." The requirement for two licensed operators aboard is explicitly stated in Coast Guard regulations that are applicable to some, but not all, of the vessels included in the terms "charter vessel" and "headboat" in these regulations. The Council, however, has concluded that having two licensed operators aboard on trips of over 24 hours is an appropriate condition for the exception.

Accordingly, the phrase "as required by the U.S. Coast Guard for trips of over 12 hours" is proposed to be removed.

To ensure uniform enforcement of the bag limits for reef fish, NMFS proposes to clarify that the limits apply not only to a person aboard a vessel that fishes in the EEZ, but also to a person aboard a fishing vessel that possesses reef fish in the EEZ. This clarification would prevent a person aboard a fishing vessel from possessing reef fish in the EEZ under the guise of having caught them outside the EEZ, but would not prevent the possession of reef fish in the EEZ aboard a non-fishing vessel, such as a refrigerated transport carrying reef fish in interstate trade.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary of Commerce (Secretary) to publish

regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 5, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator for Fisheries, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR) as part of Amendment 5, which concludes that this rule, if adopted, would have the effects summarized as follows. The requirement to return all fish traps upon completion of a trip would have a negative economic impact on trap fishermen and a positive effect on enforcement of the fish trap requirements that were established to conserve reef fish resources. The RIR does not reach a conclusion as to which is the larger effect. The proposed moratorium on fish trap permits is deemed to have zero short-term net economic effects. In the long term, the effects depend primarily on the moratorium's contribution to the Council's management programs currently under development, such as license limitation or limited entry. The proposed SMZs off Alabama would reduce net profitability of commercial vessels to an extent that would exceed the apparent gains to recreational vessels and, therefore, in the long term has potentially a negative economic outcome. The RIR also concludes that the small amount of effort that would be

displaced by implementation of the SMZs would be more than compensated for by increased effort from the remaining users. The proposed framework procedure for establishing future SMZs in the Gulf of Mexico would have no measurable effects on fishery participants. Specific effects of future SMZs would be evaluated in accordance with the framework procedure. Requiring all finfish to be landed with heads and fins intact, increasing the size limit for red snapper, and closing Riley's Hump during the mutton snapper spawning season would most likely have small net positive benefits to society. Additional analysis and discussion are contained in the RIR, a copy of which is available (see ADDRESSES).

The Council prepared an initial regulatory flexibility analysis (IRFA) as part of the RIR, which concludes that, if implemented, the measures in this proposed rule, considered individually, would not have a significant economic impact on small entities, but, considered collectively, would have a significant economic impact on a substantial number of small entities. Additional analysis and discussion are contained in the IRFA, a copy of which is available (see ADDRESSES).

The Council prepared a final supplemental environmental impact statement (SEIS) for Amendment 5 that discusses the impacts on the environment of the reef fish fishery and the impacts that would result from implementation of the amendment. The final SEIS will be filed with the Environmental Protection Agency (EPA). EPA will publish a notice of availability of the final SEIS for a 30-day comment period ending before a final agency decision on approving Amendment 5.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule involves, but does not change, collection-of-information requirements subject to the Paperwork Reduction Act, specifically, fishing vessel reports, fishing vessel permits, and dealer/processor reports. These requirements were previously approved by the Office of Management and Budget under OMB Control Numbers

0648-0016, 0648-0205, and 0648-0013, respectively. The public reporting burdens for these collections of information, estimated to average 10-18, 15, and 10 minutes per response, respectively, are not changed by this rule. Send comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing this burden, to Edward E. Burgess, Southeast Region, NMFS (see ADDRESSES above), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, (Attention NOAA Desk Officer), Washington, DC 20503.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 30, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is proposed to be amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.1, paragraph (b) is revised to read as follows:

§ 641.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of reef fish in the Gulf of Mexico EEZ, except that §§ 641.5 and 641.25 also apply to fish from adjoining state waters. The boundary between the Gulf of Mexico EEZ and the Atlantic Ocean EEZ begins at the intersection of the outer boundary of the EEZ and 83°00'W. longitude, proceeds north to 24°35'N. latitude (near Dry Tortugas), east to Marquesas Key, then through the Florida Keys to the mainland.

3. In § 641.4, paragraph (b)(2)(xiv) is removed; paragraphs (a)(1), (a)(4), (b)(1), (b)(2) introductory text, (b)(2)(xi), (b)(2)(xiii)(B), (b)(2)(xiii)(C), (h), (i), and (k) are revised; and new paragraph (o) is added to read as follows:

§ 641.4 Permits and fees.

(a) * * *

(1) As a prerequisite to selling reef fish and to be eligible for exemption from the bag limits specified in

§ 641.24(b), an owner or operator of a vessel that fishes in the EEZ must obtain an annual vessel permit.

(4) To possess or use a fish trap in the EEZ, an annual vessel permit for reef fish and a fish trap endorsement must be issued to the vessel and must be on board the vessel. In addition, a color code for marking the vessel and trap buoys must be obtained from the Regional Director.

(b) * * *

(1) An application for a vessel permit must be submitted and signed by the owner or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(xi) A sworn statement by the applicant certifying that more than 50 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, or charter or headboat operations, during either of the two calendar years preceding the application;

(xiii) * * *

(B) The applicant's desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code); and

(C) A statement that the applicant will allow an authorized officer reasonable access to his or her property (vessel, dock, or structure) to examine fish traps for compliance with these regulations.

(h) *Display.* A permit or endorsement issued under this section must be carried on board the fishing vessel and such vessel must be identified as provided for in § 641.6. The operator of a fishing vessel must present the permit or endorsement for inspection upon request of an authorized officer.

(i) *Sanctions and denials.* A permit or endorsement issued pursuant to this section may be revoked, suspended, or modified, and a permit or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(k) *Replacement.* A replacement permit or endorsement may be issued. An application for a replacement permit or endorsement will not be considered

a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement.

(o) *Moratorium on fish trap endorsements.* The provisions of this paragraph (o) are effective for 3 years commencing on the effective date of this rule.

(1) A fish trap endorsement will not be issued or renewed unless the vessel for which the endorsement is requested and its current owner have records of landings of reef fish from fish traps in the EEZ of the Gulf of Mexico during 1991 or 1992, as reported on fishing vessel logbooks received by the Science and Research Director on or before November 19, 1992, except as provided in paragraph (o)(2) of this section.

(2) An owner of a vessel with a fish trap endorsement may transfer the endorsement to another vessel owned by the same entity by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(3) A fish trap endorsement is not transferable upon purchase of a vessel with a fish trap endorsement, the provisions of paragraph (1)(3) of this section regarding purchase of a vessel with a reef fish permit notwithstanding.

(4) A fish trap endorsement that is not renewed or that is revoked will not be reissued.

4. In § 641.5, paragraphs (b), (c), (d), (f), (g), and (i) are revised to read as follows:

§ 641.5 Recordkeeping and reporting.

(b) *Vessels fishing with fish traps.* The owner or operator of a vessel for which a fish trap endorsement has been issued under § 641.4, or the owner or operator of a vessel that uses a fish trap in adjoining state waters, must maintain a fishing record on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director so as to be received not later than 7 days after the end of each fishing trip. If no fishing occurred during a month, a report so stating must be submitted on one of the forms to be received not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(c) *Vessels not fishing with fish traps.* The owner or operator of a vessel for which a reef fish permit has been issued under § 641.4, or the owner or operator of a vessel that harvests reef fish in adjoining state waters, and who is selected by the Science and Research

Director, must maintain a fishing record on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director on a monthly basis (or more frequently, if requested by the Science and Research Director) so as to be received not later than 7 days after the end of the reporting period. If no fishing occurred during a reporting period, a report so stating must be submitted on one of the forms to be received not later than 7 days after the end of the reporting period. Information to be reported is indicated on the form and its accompanying instructions.

(d) *Dealers and processors.* Any person who receives reef fish by way of purchase, barter, trade, or sale from a fishing vessel or person that fishes for or lands reef fish from the EEZ or adjoining state waters, and who is selected by the Science and Research Director, must maintain a record of reef fish received on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director on a monthly basis (or more frequently, if requested by the Science and Research Director) so as to be received not later than 7 days after the end of the reporting period. If no fish were received during a reporting period, a report so stating must be submitted on one of the forms to be received not later than 7 days after the end of the reporting period. Information to be reported is indicated on the form and its accompanying instructions.

(f) *Charter vessels.* The owner or operator of a charter vessel that fishes for or lands reef fish under the bag limits in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected by the Science and Research Director, must maintain a daily fishing record for each trip on forms provided by the Science and Research Director. These forms must be submitted to the Science and Research Director on a weekly basis so as to be received not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(g) *Headboats.* The owner or operator of a headboat that fishes for or lands reef fish under the bag limits in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected by the Science and Research Director, must maintain a daily fishing record for each trip, or a portion of such trips as specified by the Science and Research Director, on forms provided by the Science and Research Director. These

forms must be submitted to the Science and Research Director at least monthly so as to be received not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(i) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel and a dealer or processor are required upon request to make reef fish or parts thereof available for inspection by the Science and Research Director or an authorized officer.

5. In § 641.6, the section heading and paragraphs (a) through (e) are revised to read as follows:

§ 641.6 Vessel and gear identification.

(a) *Official number.* A vessel for which a permit has been issued under § 641.4 must display its official number—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 feet (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Color code.* In addition, a vessel for which a fish trap endorsement has been issued under § 641.4 must display its color code—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In the form of a circle at least 20 inches (50.8 cm) in diameter; and

(3) Permanently affixed to or painted on the vessel.

(c) *Duties of operator.* The operator of each fishing vessel specified in paragraph (a) or (b) of this section must—

(1) Keep the official number and color code clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number and color code from an enforcement vessel or aircraft.

(d) *Fish traps.* A valid identification tag, available from the Regional Director, must be affixed to each fish

trap used or possessed in the EEZ and to each fish trap aboard a vessel for which a fish trap endorsement has been issued under § 641.4. Such tag shows the specific tag number (normally 1 through 100, or less), the permit number, and the month and year through which the permit and tag are valid.

(e) *Buoys.* Each buoy used to mark a fish trap, or each end of a string of traps, must display the designated color code and permit number so as to be easily distinguished, located, and identified.

6. In § 641.7, paragraphs (a), (b), (g), (i), (k), (l), and (s) are revised and new paragraphs (w) through (aa) are added to read as follows:

§ 641.7 Prohibitions.

(a) Falsify information specified in § 641.4(b)(2) on an application for a vessel permit, or information on an application for an endorsement on a permit.

(b) Fail to display a permit or endorsement, as specified in § 641.4(h).

(g) Possess a finfish without its head and fins intact, as specified in § 641.21(b).

(i) Use or possess in the EEZ a fish trap that does not conform to the requirements for escape windows, panels and access doors with degradable fasteners, mesh sizes, and buoys, as specified in § 641.22 (b)(1), (b)(2), (b)(3), and (b)(7).

(k) Fish or possess in the EEZ more than 100 fish traps per vessel, as specified in § 641.22(b)(5).

(l) Pull or tend a fish trap, except during the hours specified in § 641.22(b)(6)(i); tend, open, pull, or otherwise molest or have in possession another person's fish trap, except as specified in § 641.22(b)(6)(ii); or fail to retrieve all fish traps and return them to port on each trip, as specified in § 641.22(b)(6)(iii).

(s) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a reef fish possessed under the bag limits, as specified in § 641.24(g).

(w) Use or possess in the EEZ a fish trap without a fish trap endorsement, as specified in § 641.4(a)(4).

(x) During May and June, fish in Riley's Hump, as specified in § 641.23(c).

(y) In a special management zone, fish for reef fish with prohibited or

unauthorized fishing gear, or, after having fished in a special management zone for species other than reef fish, exceed the possession and landing limits for reef fish; as specified in § 641.23(d).

(z) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a reef fish.

(aa) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

7. In § 641.21, paragraph (a) (1) and (b) are revised to read as follows:

§ 641.21 Harvest limitations.

(a) * * *

Red snapper—

(i) Effective through December 31, 1993—13 inches (33.0 cm) total length;

(ii) Effective January 1, 1994, through December 31, 1995—14 inches (35.6 cm) total length;

(iii) Effective January 1, 1996, through December 31, 1997—15 inches (38.1 cm) total length;

(iv) Effective January 1, 1998—16 inches (40.6 cm) total length.

(b) *Head and fins intact.* (1) Except as specified in paragraphs (b)(2), (b)(3), and (b)(4) of this section, a finfish possessed in the EEZ in the Gulf of Mexico must have its head and fins intact and such finfish taken from the EEZ must have its head and fins intact through landing. Such finfish may be eviscerated, gilled, and scaled but must otherwise be maintained in a whole condition.

(2) Shark, swordfish, and tuna species are exempt from the requirements of paragraph (b)(1) of this section.

(3) Bait is exempt from the requirements of paragraph (b)(1) of this section.

(i) For the purpose of this paragraph (b)(3), bait means—

(A) Packaged, headless fish fillets that have the skin attached and are frozen or refrigerated,

(B) Headless fish fillets that have the skin attached and are held in brine; or

(C) Small pieces no larger than 3 cubic inches (7.6 cubic cm) or strips no larger than 3 inches by 9 inches (7.6 cm by 22.9 cm) that have the skin attached and are frozen, refrigerated, or held in brine.

(ii) Paragraph (b)(3)(i) of this section notwithstanding, a finfish or part thereof possessed in or landed from the EEZ that is subsequently sold, purchased, traded, or bartered or attempted to be sold, purchased, traded,

or bartered as a finfish species, rather than as bait, is not bait.

(4) Legal-sized finfish possessed for consumption at sea aboard the harvesting vessel are exempt from the requirements of paragraph (b)(1) of this section provided—

- (i) Such finfish do not exceed any applicable bag limit;
- (ii) Such finfish do not exceed 1.5 pounds (680 gm) of finfish parts per person on board; and
- (iii) The vessel is equipped to cook such finfish on board.

* * * * *

8. In § 641.22, paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii) introductory text, (b)(5) and (b)(6) are revised and new paragraph (b)(7) is added to read as follows:

§ 641.22 Gear restrictions.

- (b) * * *
- (2) * * *
- (i) A panel or access door must be located opposite each side of the trap that has a funnel.
 - (ii) The opening covered by each panel or access door must be 144 square inches (929 square cm) or larger, with one dimension of the area equal to or larger than the largest interior axis of the trap's throat (funnel) with no other dimension less than 6 inches (15.2 cm).
 - (iii) The hinges and fasteners of each panel or access door must be constructed of one of the following degradable materials:

(5) *Effort limitation.* The maximum number of traps that may be assigned to, possessed, or fished in the EEZ by a vessel is 100.

(6) *Tending traps.* (i) A reef fish trap may be pulled or tended only during the period from official (civil) sunrise to official (civil) sunset.

(ii) A reef fish trap may be tended only by a person (other than an authorized officer) aboard the vessel for which the fish trap endorsement has been issued under § 641.4 to fish such trap, or aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel with the fish trap endorsement. Such written consent is valid solely for the removal of fish traps from the EEZ, and harvest of fish incidental to such removal, when vessel or equipment breakdown prevents the vessel with the fish trap endorsement from retrieving its traps.

(iii) The operator of a vessel from which a fish trap is deployed in the EEZ must retrieve all the vessel's fish traps and return them to port on each trip. A fish trap that is not returned to port on

a trip, and its attached line and buoy, may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If an owner of such trap or the operator of the responsible vessel can be ascertained, the owner and/or operator is subject to appropriate civil penalties.

(7) *Buoys.* A buoy that floats on the surface must be attached to each fish trap, or to each end of a string of traps, used in the EEZ.

9. In § 641.23, new paragraphs (c) and (d) are added to read as follows:

§ 641.23 Area limitations.

(c) *Riley's Hump seasonal closure.* From May 1 through June 30 each year, Riley's Hump, southwest of Dry Tortugas, Florida, is closed to all fishing. Riley's Hump is enclosed by rhumb lines joining the following points in the order listed:

Point	Latitude	Longitude
A	24°32.2' N	83°08.7' W.
B	24°32.2' N	83°05.2' W.
C	24°28.7' N	83°05.2' W.
D	24°28.7' N	83°08.7' W.
A	24°32.2' N	83°08.7' W.

(d) *Special management zones (SMZs).* (1) The following artificial reefs and surrounding areas are established as SMZs:

(i) *Alabama—A:* The area is bounded by rhumb lines connecting the following points in the order listed:

Point	Latitude	Longitude
A	30°02.5' N	88°07.7' W.
B	30°02.6' N	87°59.3' W.
C	29°55.0' N	87°55.5' W.
D	29°54.5' N	88°07.5' W.
A	30°02.5' N	88°07.7' W.

(ii) *Alabama—B:* The area is bounded by rhumb lines connecting the following points in the order listed:

Point	Latitude	Longitude
A	29°59.6' N	87°47.7' W.
B	30°03.8' N	87°32.2' W.
C	29°33.5' N	87°32.2' W.
D	29°51.4' N	87°47.0' W.
A	29°59.6' N	87°47.7' W.

(iii) *Alabama—C:* The area is bounded by rhumb lines connecting the following points in the order listed:

Point	Latitude	Longitude
A	29°47.5' N	87°46.7' W.
B	29°28.5' N	87°32.0' W.
C	29°15.75' N	87°31.5' W.

Point	Latitude	Longitude
D	29°26.3' N	87°45.0' W.
A	29°47.5' N	87°46.7' W.

(2) In an SMZ specified in paragraph (d)(1) of this section, fishing for reef fish is limited to hook-and-line gear with three or less hooks per line and spearfishing gear. For the purpose of this paragraph (d)(2), fishing for reef fish means possessing reef fish aboard or landing reef fish from—

- (i) A vessel that is operating as a charter vessel or headboat;
- (ii) A recreational vessel, that is, a vessel that is not in a commercial fishery; or
- (iii) A vessel that has been issued a permit under § 641.4 when the reef fish aboard or landed from the vessel exceed a bag limit specified in § 641.24(b), for a species that has a bag limit, or exceed 5 percent by weight of all fish aboard, for other reef fish.

(3) A person aboard a vessel that uses in an SMZ gear other than hook-and-line gear with three or fewer hooks per line and spearfishing gear to fish for species other than reef fish may not possess reef fish in excess of the bag limits specified in § 641.24(b), for those species that have a bag limit, and in excess of 5 percent by weight of all fish aboard, for other reef fish, and may not land from a trip on which fishing was conducted in an SMZ, reef fish in excess of those limits.

10. In § 641.24, in paragraph (c)(1), the phrase "as required by the U.S. Coast Guard for trips of over 12 hours" is removed; and paragraphs (a) and (g) are revised to read as follows:

§ 641.24 Bag and possession limits.

(a) *Applicability.* (1) Bag limits apply to a person—

- (i) Who fishes from a fixed structure in the EEZ; or
- (ii) Aboard a vessel that fishes in the EEZ, or aboard a fishing vessel that possesses reef fish in the EEZ,
 - (A) Without a permit specified in § 641.4 on board,
 - (B) With trawl gear or entangling net gear on board,
 - (C) With a longline or buoy gear on board when such vessel is fishing or has fished on its present trip in the longline and buoy gear restricted area specified in § 641.23(b),
 - (D) That is operating as a charter vessel or headboat, or
 - (E) For a species for which the quota specified in § 641.25 has been reached and closure has been effected.

(2) For the purpose of paragraph (a)(1)(ii)(B) of this section, a vessel is considered to have trawl gear on board

when trawl doors and a net are on board. Removal from the vessel of all trawl doors or all nets constitutes removal of trawl gear.

(3) For the purpose of paragraph (a)(2)(ii)(C) of this section, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements, in its entirety, constitutes removal of a longline.

* * * * *
 (g) *Sale.* A reef fish possessed under the bag limits specified in paragraph (b)

of this section may not be purchased, bartered, traded, or sold, or attempted to be purchased, bartered, traded, or sold.

§ 641.27 [Amended]

11. In § 641.27, in paragraph (a), the reference to "641.24(a)(2)(ii)" is revised to read "641.24(a)(1)(ii)(B)".

12. Section 641.28 is revised to read as follows:

§ 641.28 Adjustment of management measures.

In accordance with the procedures and limitations of the Fishery Management Plan for the Reef Fish

Resources of the Gulf of Mexico, the Regional Director may—

(a) Establish or modify for species or species groups in the reef fish fishery the following: target dates for rebuilding overfished species, total allowable catch, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and quotas; and

(b) Establish or modify special management zones and the gear restrictions applicable in each.

13. In Appendix A to Part 641, in Table 2, the reference location and coordinates for Point 16 are revised and new Point 16A is added in numerical order to read as follows:

TABLE 2.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point No. and reference location ¹	North latitude	West longitude
16 Southeast corner of SMZ C	29°15.75'N	87°31.5'W.
16A South-southeast of Mobile Bay	29°25.1'N	87°43.5'W.

¹ Nearest identifiable landfall, boundary, navigational aid, or submarine area.

14. In Appendix A to Part 641, Figure 4 and Figure 5 are revised to read as follows:

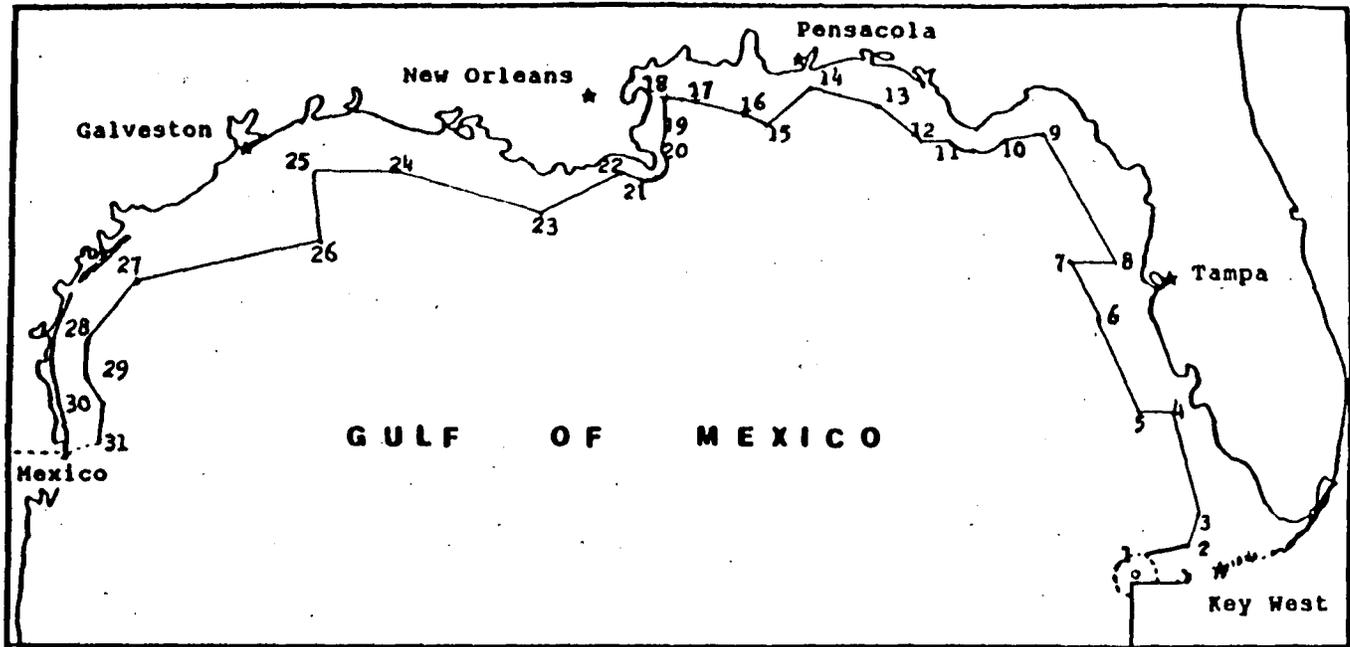


Figure 4. Seaward Limits of the Stressed Area.

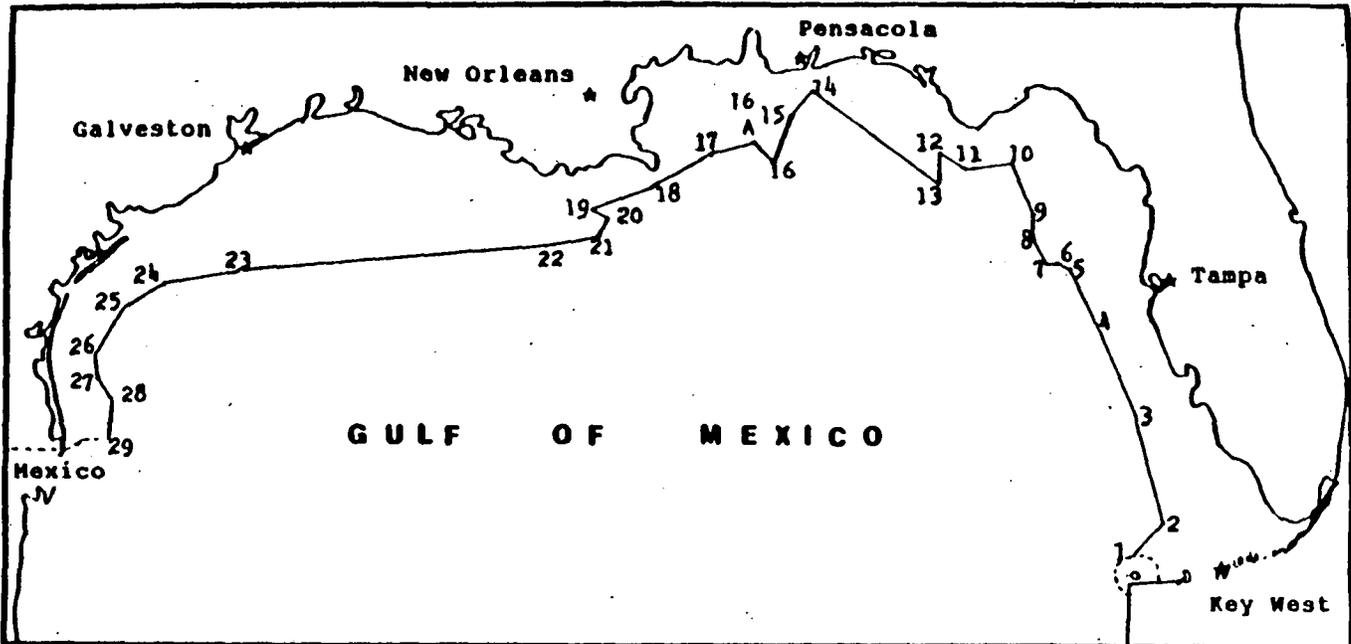


Figure 5. Seaward Limits of the Longline and Buoy Gear Restricted Area.

50 CFR Part 641**Reef Fish Fishery of the Gulf of Mexico**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 7 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico for review by the Secretary of Commerce (Secretary). Written comments are requested from the public.

DATES: Written comments must be received on or before December 2, 1993.

ADDRESSES: Comments should be sent to the Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702. Copies of Amendment 7, which includes an environmental assessment/regulatory impact review, and a minority report submitted by three Council members objecting to the measures relating to dealer permits and recordkeeping, may be obtained from the Council at 5401 W. Kennedy Boulevard, suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3161.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving an amendment, immediately publish a notice that the amendment is available for public review and comment. The Secretary will consider public comment in determining approvability of the amendment.

Amendment 7 proposes to:

- (1) Require dealers who purchase Gulf of Mexico reef fish from fishing vessels to obtain Federal permits and maintain records of such purchases;
- (2) Restrict sale/purchase of reef fish from the exclusive economic zone to permitted vessels/dealers;
- (3) Allow the transfer of a fish trap endorsement with the transfer of the vessel's reef fish permit to an immediate family member; and

(4) Allow the transfer or revision of a red snapper endorsement on a reef fish vessel permit upon the disability or death of a vessel owner or, in certain circumstances, an operator.

Proposed regulations to implement Amendment 7 are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-24549 Filed 10-5-93; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 651

[I.D. #092293]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA announces that the New England Fishery Management Council has submitted Amendment 5 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) for Secretarial review and is requesting comments from the public.

DATES: Comments will be accepted through November 29, 1993.

ADDRESSES: Send comments to Richard B. Roe, Regional Director, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Clearly mark the outside of the envelope "Comments on Multispecies Amendment." Copies of the Amendment, Supplemental Environmental Impact Statement, and Regulatory Impact Review/Initial Regulatory Flexibility Analysis are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Fishery Policy Analyst, 508-281-9252.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) requires that each fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and

approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving the plan or amendment, must immediately make a preliminary evaluation of whether the amendment is sufficient to warrant continued review, and publish a notice that the plan or amendment is available for public review and comment. The Secretary has determined that two of the measures are not consistent with the Magnuson Act and thus has disapproved those measures as explained below. The Secretary will consider the public comments in determining whether to approve the remaining provisions of the amendment.

The remaining provisions proposed in Amendment 5 are: A moratorium on most new entrants into the multispecies finfish fishery; limitations on upgrading of vessel size and engine horsepower; exceptions to the moratorium for vessels using less than 4,500 rigged hooks or fishing under a possession limit; an effort reduction program where vessels fish using a combination of blocks of time out of the fishery and time spent at the dock (Fleet Days-at-Sea (DAS)) unless they elect to take an allocations of actual Individual DAS that vessels may fish for multispecies finfish; exceptions to the effort reduction program for vessels 45 feet (13.7 m) and less in length, vessels fishing less than 4,500 hooks, vessels fishing sink gillnet gear, and vessels at sea for less than a day; possession-limit-only restriction on vessels fishing with sea scallop dredges; a requirement to purchase and install a Vessel Tracking System unit (VTS) for vessels fishing Individual DAS and vessels that have historically fished with a scallop dredge and otter trawl; a card monitoring or call-in system for other vessels in the Fleet DAS reduction program; a minimum mesh size in the Southern New England/Mid-Atlantic area; an increase in the minimum mesh size in the Gulf of Maine/Georges Bank area; exceptions to the mesh size regulations for vessels fishing less than the possession limit, and for vessels fishing with purse seine or midwater trawl gear; minimum fish sizes; a prohibition on pair trawling; seasonal mesh requirements in the Stellwagen Bank/Jeffreys Ledge area; a suspension of Closed Area I except for fixed gear; a modification of Closed Area II in area and time; a closure of an area in the vicinity of the Nantucket Lightship which occurs when a research trawl survey index is reached; a requirement that vessels fishing for northern shrimp use a finfish excluder device; permits for vessel operators and dealers; mandatory reporting for permitted

vessels and dealers; and framework measures to adjust the effort control and other measures. This proposed amendment also includes definitions of overfishing for ocean pout, pollock, red hake, white hake, and windowpane flounder. The intent of this amendment is to reduce the fishing mortality rate in order to eliminate the overfished condition of the stocks of multispecies finfish.

Disapproved Amendment 5 measures are: a haddock possession limit of 5,000 pounds (2,268 kg), and an exemption to the regulations for vessels fishing for winter flounder in state waters. The

haddock possession limit was found to be inconsistent with National Standard 1 of the Magnuson Act by not preventing overfishing. The possession limit was determined to be too high to have any appreciable effect at reducing fishing mortality. The winter flounder exemption was found to be inconsistent with National Standard 1 because it is poorly defined, does not provide adequate information to determine that it would prevent overfishing, may have led to increased mortality of winter flounder and other multispecies, and would compound the difficulties in enforcing the FMP's other measures.

The receipt date for this amendment is September 30, 1993. Proposed regulations to implement this amendment are scheduled to be published within 15 days of the receipt date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-24544 Filed 10-1-93; 3:37 pm]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 58, No. 192

Wednesday, October 6, 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

Food and Nutrition Service

Nutrition Program for the Elderly; Adjusted Level of Assistance From October 1, 1992 to September 30, 1993

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the adjusted level of per-meal assistance for the Nutrition Program for the Elderly (NPE) for Fiscal Year 1993. The initial level of assistance of \$.5780 is adjusted to \$.6206 for each eligible meal in accordance with section 311(a)(4) of the Older Americans Act of 1965, as amended by section 310 of the Older Americans Act Amendments of 1992.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302-1594 or telephone (703) 305-2660.

SUPPLEMENTARY INFORMATION:

Classification

This program is listed in the Catalog of Federal Domestic Assistance under Nos. 10.550 and 10.570 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility

Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Legislative Background

On September 30, 1992, the President signed Public Law 102-375, the Older Americans Act Amendments of 1992. Section 310 of this law amended section 311(a)(4) of the Older Americans Act of 1965 (the Act) to require the Secretary of Agriculture to maintain a per-meal level of assistance for NPE of \$.6206 for Fiscal Year 1993. Section 311(c)(2) of the Act was amended to provide that the final reimbursement claims must be adjusted so as to utilize the entire program appropriation for the fiscal year for per-meal support.

Congress appropriated funds for NPE for Fiscal Year 1993 in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1993 (Pub. L. 102-341), enacted on August 14, 1992, prior to enactment of the Older Americans Act Amendments of 1992. Therefore, the Fiscal Year 1993 NPE appropriation was established on the basis of the minimum per-meal rate in effect at that time, i.e., \$.5676, rather than the rate structure that was subsequently established on September 30, 1992 by the 1992 amendments to section 311 of the Act.

The Department expected that the Fiscal Year 1993 NPE Appropriation of \$142,912,000 would prove insufficient to sustain the legislatively stipulated rate of \$.6206. Therefore, based on its projection of the number of meals to be claimed during the fiscal year, and in light of constitutional and statutory prohibitions on obligating or spending funds in excess of the available appropriation, the Department established an initial per-meal reimbursement rate of \$.5780, the highest rate which it believed the appropriation would support. This initial level of per-meal assistance was announced in the December 11, 1992 Federal Register (57 FR 58784).

Rate Adjustment

The Department's meal service projection for Fiscal Year 1993 assumes a .9 percent increase in meal service over the previous year. Meal counts for the first quarter of Fiscal Year 1993 very closely tracked this projection. However, second quarter data reveal a decline which more than compensates for the slight increase of the first

quarter. The Department has concluded that the Fiscal Year 1993 NPE appropriation will support an upward adjustment of the initially announced rate of \$.5780, but that it will not permit an adjustment up to the legislatively stipulated level of \$.6206. However, the Department has determined that sufficient funds can be reprogrammed from other accounts to provide the balance necessary to support all meals claimed in Fiscal Year 1993 at the legislative level. Therefore, the Department has decided to supplement the NPE appropriation in this manner so that it can adjust the Fiscal Year 1993 per-meal rate to \$.6206. This adjusted rate applies to all eligible meals served during the year, including those served prior to this announcement. Since the reprogramming process enables the Department to transfer to NPE precisely the amount necessary to support all meals at this rate, further adjustments to the Fiscal Year 1993 rate are not anticipated.

Dated: June 18, 1993.

Christopher J. Martin,
Acting Administrator.

[FR Doc. 93-24506 Filed 10-5-93; 8:45 am]

BILLING CODE 3410-30-U

Forest Service

Exemption of the Main Canyon Summit/Sweetwater/Pine Lake Salvage Sales and Recovery Project, Dixie National Forest, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that decisions to implement timber salvage harvest, treatment of infested trees which are non-merchantable, and reforestation activities to rehabilitate and recover natural resources from recent mountain pine beetle attacks on the Main Canyon Summit/Sweetwater/Pine Lake project area of the Escalante Ranger District on the Dixie National Forest are exempted from appeal per provisions of 36 CFR 217.4(a)(11).

DATES: Effective October 6, 1993.

FOR FURTHER INFORMATION CONTACT: Kevin R. Schulkoski, District Ranger, Escalante Ranger District, Dixie National Forest, P.O. Box 246, Escalante, Utah 84726, (801) 826-5400.

SUPPLEMENTARY INFORMATION: Several years of drought in southern Utah have reduced soil moisture and weakened already stressed ponderosa pine, increasing their susceptibility to attack by mountain pine beetle. Consequently, mountain pine beetle populations have dramatically increased over the past 2-3 years. As part of the effort to rehabilitate and recover timber resources damaged by the increasing beetle populations, the Escalante Ranger District has developed a proposal to salvage insect infested trees, to further disrupt their life cycle by cutting and burning infected non-merchantable trees, and to reforest damaged areas. A District Interdisciplinary Team (IDT) has completed the National Environmental Protection Act (NEPA) process to identify issues, develop alternatives and to analyze the effects of implementing the proposed recovery activities. This process has resulted in the completion of a categorical exclusion documenting the analysis of the proposed action. The project area is located on the west side of the District in Garfield County, between Escalante Canyon and Pine Lake. The project area totals an estimated 600 acres with 85 acres proposed for recovery and rehabilitation. Mortality has increased substantially over the last 2 years as the insect population increases. The infestation centers are within stands of ponderosa pine which will support continued population increases. This would result in substantial losses in timber value, visual quality, wildlife habitat and forest health. The District is proposing to salvage harvest insect infested trees and to further disrupt their breeding cycle and decrease beetle populations by cutting and burning non-merchantable trees which are infested. There is no road construction proposed for the salvage harvest operation. Management direction for the Main Canyon/Pine Lake/Sweetwater area is established in the Land and Resource Plan (LRMP) for the Dixie National Forest. The LRMP provides for the removal of salvage timber from lands within the project area. In addition, the LRMP describes standards and guidelines which must be observed when harvesting timber to protect soil, water, wildlife, visual quality and other resources. The proposed action for the Main Canyon Summit/Sweetwater/Pine Lake Salvage and Recovery Project is consistent with the standards, guidelines, objectives and management direction provided in the LRMP.

The IDT consisting of a forester, silviculturist, wildlife biologist and landscape architect have analyzed the

insect situation and have suggested the rehabilitation and recovery process described in the proposed action. These activities will: (1) Help break up the insect breeding cycle; (2) prevent further deterioration of visual quality along Forest Highway 17 and Forest Road 132; (3) prevent further reductions in forest health and wildlife habitat; (4) recover valuable timber that would otherwise deteriorate; (5) reforest those areas which have been left without tree cover as a result of insect caused mortality and (6) prevent increases in fire hazards and fuel loading. Through the salvage timber sales, breeding insects can be removed, fuel treatments can be accomplished, and Knutson-Vandenberg (K-V) funds can be generated for use to restore forest resources that have been damaged by the increasing beetle populations.

The District Ranger has determined, through scoping and environmental analysis, that there is good cause to expedite this project. The decision for the analysis area is scheduled to be issued in mid-September, 1993. If the project is delayed because of appeals (delays up to 150 days are possible), it is likely that the salvage harvest could not be implemented during the 1993 normal operating season. This would result in a loss of volume and value of the timber due to deterioration. Delays resulting from appeals could cause a loss of 30 percent of the timber volume and 50 percent of the value, and potentially make the salvage sale uneconomical for timber purchasers. In addition, a delay in the project would likely reduce the probability of successful area rehabilitation including reforestation, fuel reduction, and control of local insect populations. Overall, delays from appeals would jeopardize the objectives of the rehabilitation and recover project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals the decision relating to salvage harvest, removal of infected nonmerchantable trees, and restoration of lands affected by mountain pine beetle in the Main Canyon Summit/Sweetwater/Pine Lake project area on the Escalante Ranger District, Dixie National Forest. The categorical exclusion discloses the effects of the proposed action on the environment and addresses the issues resulting from the proposal.

Dated: September 30, 1993.

Gray F. Reynolds,
Regional Forester, Intermountain Region,
USDA, Forest Service.
[FR Doc. 93-24554 Filed 10-5-93; 8:45 am]
BILLING CODE 3410-11-M

Control Lake Timber Harvest; Tongass National Forest, Ketchikan Area; Prince of Wales, AK Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to provide timber to the Ketchikan Pulp Company 50-year Timber Sale Contract or the Ketchikan Area Independent Timber Sale Program. The Record of Decision will disclose how the Forest Service has decided to provide harvest units, roads, and associated timber harvesting facilities. The proposed action is to harvest an estimated 187 million board feet of timber on an estimated 7,000 acres. The proposed timber harvest is located within Tongass Forest Plan Management Areas K08, K14, and K15 on Prince of Wales Island, Alaska, on the Thorne Bay Ranger District of the Ketchikan Area of the Tongass National Forest.

DATES: Comments concerning the scope of this project should be received by November 5, 1993.

ADDRESSES: Please send written comments and suggestions concerning the scope of this project to David D. Rittenhouse, Forest Supervisor, Tongass National Forest, Ketchikan Area, Attn: Control Lake EIS, Federal Building, Ketchikan, AK 99901.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and EIS should be directed to David Arrasmith, Planning Staff Officer, Tongass National Forest, Ketchikan Area, Federal Building, Ketchikan, Alaska 99901, telephone (907) 225-3101.

PUBLIC PARTICIPATION: Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and individuals and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) identification of potential issues; (2) identification of issues to be analyzed in depth; and, (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Public scoping meetings are scheduled in Alaska at Klawock, October 18, 1993; Thorne Bay, October 19, 1993; and Ketchikan, October 20, 1993. Written scoping comments are also being solicited through a scoping package that has been sent to the project mailing list.

For the Forest Service to best use the scoping input, comments should be received by November 5, 1993.

Based on results of scoping and the resource capabilities within the project area, alternatives to the proposed action, including a "no action" alternative, will be developed for the Draft Environmental Impact Statement (DEIS). The DEIS is projected to be filed with the Environmental Protection Agency (EPA) in June 1994. Public comment on the DEIS will be solicited for a minimum of 45 days from the date the notice of availability appears in the *Federal Register*. Subsistence hearings, as provided for in section 8 of the Alaska National Interest Lands Conservation Act (ANILCA), are planned during this 45-day comment period.

It is very important that those interested in this project comment on the DEIS. To be most helpful, comments should be as specific as possible.

PERMITS: Permits required for implementation include the following:

1. U.S. Army Corps of Engineers
 - Approval of the discharge of dredged or fill materials into waters of the United States under Section 404 of the Clean Water Act
 - Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899
2. Environmental Protection Agency
 - National Pollutant Discharge Elimination System (402) Permit
 - Review Spill Prevention Control and Countermeasure Plan
3. State or Alaska, Department of Natural Resources
 - Tideland Permit and Lease or Easement
4. State of Alaska, Department of Environmental Conservation
 - Solid Waste Disposal Permit
 - Certification of Compliance with Alaska Water Quality Standards (401 Certification)

RESPONSIBLE OFFICIAL: David D. Rittenhouse, Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: September 29, 1993.

Anne Huebner,

Acting Forest Supervisor.

[FR Doc. 93-24498 Filed 10-5-93; 8:45 am]

BILLING CODE 3410-11-M

Lostine Wild and Scenic River Management Plan, Wallowa-Whitman National Forest, Wallowa County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: On July 7, 1993, Wallowa-Whitman Acting Forest Supervisor, William R. Gast, made a decision to adopt into the Forest Plan the Lostine Wild and Scenic River Management Plan which required an amendment to the Wallowa-Whitman Forest Plan.

This management plan outlines use levels, development levels, resource protection measures, and outlines a general management direction for the river corridor. This amendment is necessary to implement the Wild and Scenic Rivers Act which required the Forest Service to develop a management plan for the Lostine River. Interim direction was identified in the Forest Plan as Management Area 7 (Wild and Scenic Rivers). The environmental assessment documents the analysis of alternatives to managing the Lostine Wild and Scenic River in accordance with the Wild and Scenic Rivers Act.

This decision is subject to appeal pursuant to Forest Service regulations 36 CFR part 217. Appeals must be filed within 45 days from the date of publication in the Baker City Herald. Notices of Appeals must meet the requirement of 36 CFR 217.9.

The environmental assessment for the Lostine Wild and Scenic River Management Plan is available for the public review at the Wallowa-Whitman National Forest Supervisor's Office in Baker City, Oregon.

EFFECTIVE DATE: Implementation of this decision shall not occur within 7 days following publication of the legal notice of the decision in the Baker City Herald.

FOR FURTHER INFORMATION CONTACT:

For further information, contact Marty Gardner, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814 or phone (503)-523-6391.

Dated: September 22, 1993.

John W. Austin,

Acting Forest Supervisor.

[FR Doc. 93-24500 Filed 10-5-93; 8:45 am]

BILLING CODE 3410-11-M

Grand Island Advisory Commission Meeting

AGENCY: Forest Service, USDA.

ACTION: Grand Island Advisory Commission meeting.

SUMMARY: The Grand Island Advisory Commission will meet on October 21, 1993 at 8 a.m. at the Comfort Inn on M-28 East in Munising, Michigan. An agenda for the one day meeting will consist of an update on the Draft Environmental Impact Statement from the Planning Team, feasibility group report, and the beginning of the development plan process.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT:

Direct questions about this meeting to Dennis Jones, Public Service Team Leader, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, MI 49829, (906) 786-4062.

Dated: September 28, 1993.

William F. Spinner,

Forest Supervisor.

[FR Doc. 93-24460 Filed 10-5-93; 8:45 am]

BILLING CODE 3410-11-M

National Urban and Community Forestry Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Washington, DC, October 14-15, 1993, 8:30 a.m. to 4:30 p.m. The Council is comprised of 15 members appointed by the Secretary of Agriculture. The purpose of the meeting is for the Council to present the National Urban and Community Forestry Action Plan to the Secretary of Agriculture and members of Congress. They will also make a final decision on awards of the challenge cost-share program. The meeting will be Chaired by William Kruidenier of the International Society of Arboriculture and is open to the public. Time will be provided at the beginning of each major agenda topic for public input. Time to speak must be requested in advance from the committee staff. However, Council discussion is limited to Forest Service staff and Council members. Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting.

DATES: The meeting will be held October 14-15, 1993.

ADDRESSES: The meeting will be held at the Auditor's building, 201 14th Street SW., Washington, DC 20250.

Send written statements and/or requests for agenda items to Brian McGuire, National Urban and Community Forestry Advisory Council, c/o Forest Service—Cooperative Forestry, USDA, P.O. Box 96090, Washington, DC 20090-6090, or phone (202) 205-1689.

FOR FURTHER INFORMATION CONTACT: Brian McGuire, Cooperative Forestry Staff, (202) 205-1689.

Dated: September 29, 1993.

Michael T. Rains,
Acting Deputy Chief, State and Private Forestry.

[FR Doc. 93-24468 Filed 10-5-93; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Changes in Hydric Soils of the United States

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of change.

SUMMARY: Pursuant to 7 CFR 12.31(a)(3)(i), the Soil Conservation Service, United States Department of

Agriculture gives notice of a change in the Hydric Soils of the United States as listed in the third edition of the Hydric Soils of the United States, Miscellaneous Publication 1491, U.S. Department of Agriculture, Soil Conservation Service, June 1991.

For further information contact: Maurice J. Mausbach, National Leader, Technical Soil Services, Soil Survey Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013-2890, Telephone (202) 720-1812.

SUPPLEMENTARY INFORMATION: The third edition of the Hydric Soils of the United States was published June 1991, and a notice of change published in the *Federal Register*, October 11, 1991, vol. 56, no. 198, page 51371. Changes to this document were made in 1992 and published in the *Federal Register*, August 19, 1992, Vol. 57, No. 161, page 37517. The changes published herein reflect soils added and deleted since the 1991 publication.

The national list of hydric soils changes as additional soil series are recognized and defined and/or properties of existing soil series are updated based on additional data. These changes reflect refinements in knowledge of the soils of the United States. New soil series are recognized as

soils are mapped in previously unmapped areas. These new series have always met hydric soil criteria, whether recognized as series or not, and thus represent an insignificant change in acreage of hydric soils. Soils that are removed from the list are mostly dry phases of existing hydric soils. These dry phases would not have met wetland hydrology criteria, thus represent an insignificant change in acreage of wetlands.

The list of hydric soils is computer generated using the hydric soil criteria and a database of properties of each soil series in the United States. The database is also used to generate interpretations of how soils perform for many land uses. Therefore, some changes in the list of hydric soils result from adding phases for a hydric soil to refine another interpretation. This split or addition of a hydric phase causes an increase in the number of hydric soils, but does not affect the acres of the hydric soil. Data for all soil series are in the Soil Interpretations Record and may be reviewed by contacting a local office of the Soil Conservation Service in the appropriate State.

Dated: September 28, 1993.

Richard W. Arnold,
Director, Soil Survey Division.

SOILS ON THE OCTOBER 91 HYDRIC LIST, BUT NOT ON THE JANUARY 93 HYDRIC LIST (THE "HYDRIC CRITERIA NUMBER" COLUMN INDICATES WHAT CAUSED THE SOIL TO BE INCLUDED IN THE HYDRIC LIST. SEE THE "CRITERIA FOR HYDRIC SOILS" TO DETERMINE THE MEANING OF THIS COLUMN.)

[Revised January 31, 1993]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Olustee (FL0048) Ultic Haplaquods.	Thermic	P	0.5-1.5	Mar-Sep	<6.0	None .....	.....	.....	.....	All	3W
Pledger (TX0304) Typic Pelluderts.	Thermic	MW	>6.0	.....	<6.0	Rare-Common.	Brief	Jan-Dec	.....	Rare	2W
										Freq	5W
										Occas	2W
Prebish, Stony ⁴ (MN0563)											
Ravendale (CA1027) Entic Chromoxererts.	Mesic	MW	>6.0	.....	<6.0	Rare-Occasional.	Brief-Long.	Jan-Apr	.....	0-2%	6S
Sapelo (GA0049) Ultic Haplaquods.	Thermic	SP	0.5-1.5	Nov-Apr	<6.0	None	All	3W
Saugatuck (MI0045) Aeric Haplaquods.	Mesic	SP	0.5-2.0	Nov-May.	<6.0	None	All	4W

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Continued

[Revised January 31, 1993]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Talquin (FL0248) Entic Haplaquods.	Thermic	P	0.5-1.5	Mar-Sep	≥6.0	None .....	.....	.....	.....	All	4W
Tooles (FL0468) Arenic Albaqualfs.	Thermic	P	0.5-1.0	Feb-Sep	≥6.0	None .....	.....	.....	.....	All	3W
Altoona (WI0263) ⁴											
Bivans (FL0378) Typic Albaqualfs.	Hyperthermic	SP	1.0-1.5	Jun-Sep	<6.0	None .....	.....	.....	.....	0-5% 5-8% 8-12%	3W 4W 6W
Boulogne (FL0498) Typic Haplaquods.	Thermic	P	0.5-1.5	Mar-Sep	<6.0	None .....	.....	.....	.....	All	3W
Chaires (FL0251) Alfic Haplaquods.	Thermic	P	0.5-1.5	Mar-Sep	≥6.0	None .....	.....	.....	.....	All	4W
Dusler (MN0160) Aeric Glossaqualfs.	Frigid	SP	1.5-3.0	Oct-Jun	<6.0	None .....	.....	.....	.....	All	2W
Flemington (FL0017) Typic Albaqualfs.	Hyperthermic.	SP	1.0-1.5	Jun-Sep	<6.0	None .....	.....	.....	.....	0-5% 5-8% 8-12%	3W 4W 6W
Fredon (NJ0038) Aeric Haplaquepts.	Mesic	SP	0.5-1.5	Oct-Jun	<6.0	None-Occasional.	Brief	Jan-Apr	.....	0-3% 3-8%	3W 3W
Gansner, Ponded ⁴ (CA1438)											
Lynne (FL0009) Ultic Haplaquods.	Hyperthermic.	P	0.5-1.5	Jul-Sep	≥6.0	None .....	.....	.....	.....	All	3W
Oakhurst (TX0896) Vertic Albaqualfs.	Thermic	MW	>6.0	.....	<6.0	None .....	.....	.....	.....	1-3% 3-5% 5-8%	3E 4E 6E

¹ Some soil interpretation records representing phase of this series are not hydric.

² Some phases of this soil are not frequently flooded of long duration.

³ Some drainage classes for this soil are not hydric.

⁴ This soil record has been removed from the database since it last appeared in the hydric list.

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[Revised January 31, 1993]

Series and sub-group	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and sub-class
Adder (W10491) Terric Medisaprists.	Mesic	VP	+1-1.0	Sep-Jun	<6.0	Frequent	Long	Oct-Jun	1,3,4	Drained Undrained	4W 5W
Ajax (ID1703) Cumulic Haplaquolls.	Frigid	P	0.5-1.5	Mar-Jul	<6.0	Occasional ...	Brief	Jan-Jun	2B3	All	5W
Albaton, Dry (IA0107) Vertic Fluvaquents.	Mesic	VP	+4.-2.0	Nov-Jul	<6.0	Frequent	Brief	Mar-Oct	2B3,3	All	6W
Alvodest, Some- what Poorly Drained (OR1467) Natric Camborthids ¹ .	Mesic	SP	+5-3.0	Dec-Apr	<6.0	Rare .....	.....	.....	3	All	7W
Anan (AK0362) Typic Cryaquepts.	Cryic	VP,P	0.5-1.0	Jan-Dec	<6.0	Frequent	Long	Jul-Nov	2B3,4	0-2%	6W
Auganaush (MN0635) Mollic Ochraqualls.	Frigid	P	1.0-3.0	Nov-Jun	<6.0	None .....	.....	.....	2B3	Drained Undrained	2W 4W
Balize, Drained (LA0195) Typic Hydraquents.	Thermic	P	0.5-1.5	Jan-Dec	<6.0	Rare .....	.....	.....	2B3	All	4W
Bardwell, Winter Flooding (KY0192) Fluventic Hapludolls ² .	Thermic	W	3.0-6.0	Feb-Mar	<6.0	Frequent	Long	Dec- May.	4	0-6%	3W
Bayvi, Limestone Substratum (FL0563) Cumulic Haplaquolls.	Thermic	VP	0-1.0	Jan-Dec	<6.0	Frequent	V Brief ..	Jan-Dec	2B3	All	8W
Bear Lake, Very Poorly Drained (ID1699) Typic Calciquolls.	Frigid	VP	+2-1.0	Dec-Aug	<6.0	Frequent	V Long ..	Dec-Sep	2B3,3,4	0-1%	5W
Bellslake (ID6023) Fluvaquentic Humaquepts.	Frigid	VP	+1.-1.5	Oct-Aug	<6.0	Frequent	V Long ..	Dec-Jun	2B3,3,4	All	5W
Bemis, Stony (ME0139) Aeric Cryaquepts.	Cryic	P	0-1.0	Sep-Jun	<6.0	None .....	.....	.....	2B3	All	7S
Berner (MN0628) Terric Borosaprists.	Frigid	VP	+1.-2.0	Nov-Jun	<6.0	None .....	.....	.....	1	Drained Undrained	4W 6W
Bigsag (MT1077) Typic Halaquepts.	Frigid	P	1.0-3.0	Dec-Jun	<6.0	Rare-Occa- sional.	Brief- Long.	Mar- May.	2B3	Rare	7W
Bigsandy, Saline (MT1335) Typic Fluvaquents.	Frigid	P	1.0-2.0	Dec-Jun	<6.0	Occasional ...	Long	Apr-Jun	2B3	All	7W
Blackcreek (MT1361) Typic Haplaquepts.	Frigid	P	1.0-4.0	Apr-Jul	<6.0	Rare	2B3	0-2%	5W

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Continued

[Revised January 31, 1993]

Series and sub-group	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and sub-class
Blacklake (MT1360) Histic Haplaquands.	Frigid	VP	+2-1.0	Jan-Dec	<6.0	None .....	.....	.....	2B3,3	0-1%	5W
Boley (OK0362) Aeric Fluvaquents.	Thermic	P	0-1.0	Nov-Jun	<6.0	Frequent	V Brief-Brief.	Apr-Sep	2B3	All	5W
Borah (ID1639) Aquic Calcixerolls ¹ .	Frigid	P	1.0-2.0	Apr-Aug	<6.0	Occasional ...	Brief	Apr-May	2B3	All	5W
Boulder Lake, Poorly Drained (NV2551) Aquic Chromoxererts.	Frigid	P	+5-1.5	Dec-Jan	<6.0	None .....	.....	.....	2B3, 3	All	6W
Brandsvold (NM0625) Typic Argiaquolls.	Frigid	P	1.0-3.0	Mar-Jun	<6.0	None .....	.....	.....	2B3	All	2W
Brinum, Alkali (NV2573) Typic Halaquepts ¹ .	Mesic	VP	0.5-1.5	Sep-May	<6.0	Occasional ...	Long	Oct-May	2B3	0-2%	5W
Canbun, Stratified Substratum (UT1825) Cumulic Hapaquolls.	Frigid	P	1.0-2.0	Apr-Jul	<6.0	Occasional ...	V Brief ..	Jul-Sep	2B3	0-2%	3W
Capitola (WI0423) Mollic Ochraqualls.	Frigid	P, VP	+1-1.0	Oct-Jun	<6.0	None .....	.....	.....	2B3, 3	Drained Undrained	3W 6W
Cathro, Frequently Flooded (MI0108) Terric Borosaprists.	Frigid	VP	+2-1.0	Jan-Dec	<6.0	Frequent	Brief-V Long.	Mar-May.	1, 3	All	8W
Chaires, Hydric (FL0121) Allic Haplaquods ¹ .	Thermic	P	0-0.5	Mar-Sep	≥6.0	None .....	.....	.....	2B1	All	4W
Cheniere, Frequently Flooded (LA0202) Typic Udipsamments ^{1,2} .	Thermic	SE	≥6.0	.....	<6.0	Frequent	Long	Jan-Dec	4	Freq	5W
Chichagof (AK0348) Histic Cryaquepts.	Cryic	VP	0-1.0	Jan-Dec	<6.0	Occasional ...	V Brief ..	Oct-Apr	2B3	All	7W
Chippewa, Friable Substratum (NY0522) Typic Fragiaquepts.	Mesic	P, VP	+5-0.5	Nov-May.	<6.0	None	2B3, 3	All	7S
Chunina (AK0352) Typic Cryaquands.	Cryic	VP	0-1.5	Apr-Sep	<6.0	None	2B3	0.7%	6W

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Continued

[Revised January 31, 1993]

Series and sub-group	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and sub-class
Citypoint (W10441) Typic Borosaprists.	Frigid	VP	+1-1.0	Nov-Jun	<6.0	None .....	.....	.....	1	All	7W
Clara (FLO560) Spodic Psammaquents.	Thermic	P	0-1.0	Jun-Dec	6.0	None-Common.	Brief	Jan-Mar	2B1	None, Rare, Common ..	4W 6W
Clara (FLO561) Spodic Psammaquents.	Thermic	VP	+2-0	Jan-Dec	≥6.0	None .....	.....	.....	2B1, 3	All	6W
Clear Lake, Map>16 (CA2484) Typic Pellixererts1.	Thermic	P	+1-6.0	Dec-Mar	<6.0	Rare .....	.....	.....	2B3, 3	MAP>16 ...	
Clearwater, Depressional (MN0670) Typic Haplaquolls.	Frigid	VP	+1-1.0	Jan-Dec	<6.0	None-Rare ...	.....	.....	2B3, 3	Drained Undrained	3W 6W
Cohoctah, Low Precipitation (MI0279) Fluvaquentic Haplaquolls.	Mesic	P, VP	+1-3.0	Nov-Jul	<6.0	Common	Brief-Long.	Apr-Nov	2B3, 3, 4	All	6W
Colvin, Occasionally Flooded (ND0417) Typic Calciaquolls.	Frigid	P	0-1.0	Mar-Jun	<6.0	Occasional ...	Brief	Mar-Jun	2B3	All	3W
Cormant (MN002) Mollic Psammaquents.	Frigid	P	0.5-2.5	Apr-Jul	≥6.0	None .....	.....	.....	282	All	4W
Cradlebaugh (NV2678) Duric Haplaquolls1.	Mesic	P	1.0-2.0	Dec-May.	<6.0	Occasional ...	Brief	Dec-Mar	2B3	SLI SAL-ALK. STR SAL-ALK	6W 7W
Dawsit (W10490) Terric Borosaprists.	Frigid	VP	+1-1.0	Sep-Jun	<6.0	None .....	.....	.....	1	ALL	7W
Degarmo, Wet (OR1386) Cumulic Haplaquolls1.	Frigid	P	1.0-4.0	Mar-Sep	<6.0	Frequent	Brief	Mar-Jun	2B3	All	5W
Dosa (CA2426) Aquic Chromoxererts.	Mesic	SP	+5-2.5	Dec-Apr	<6.0	None .....	.....	.....	2A,3	0-2%	5W
Downata, Ponded (ID1785) Cumulic Haplaquolls.	Frigid	VP	+1.-1.5	Jan-Jun	<6.0	Frequent	Brief	Jan-Jun	2B3,3	All	5W
Duckston, Ponded (NC0269) Typic Psammaquents.	Thermic	P	+1.-0	Jan-Dec	≥6.0	Non-Common.	Brief	Jan-Dec	2B1,3	All	7W
Eagleton (MT1345) Cumulic Haplaquolls.	Frigid	P	1.0-2.0	Nov-Jan	<6.0	Occasional ...	Brief	Apr-Jun	2B3	All	5W

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[Revised January 31, 1993]

Series and sub-group	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and sub-class
Edina, Ponded (MO0343) Typic Argialbolls.	Mesic	P	+5-1.0	Nov-Apr	<6.0	None .....	.....	.....	2b3,3	All	3W
Edwards, Sandy Substratum (MI0616) Limnic Medisaprists.	Mesic	VP	+1-1.0	Sep-Jun	<6.0	None .....	.....	.....	1,3	All	5W
Egglake (MN0654) Mollic Ochraqualfs.	Frigid	P	1.0-3.0	Oct-Jul	<6.0	None .....	.....	.....	2B3	All	2W
Fredon, Poorly Drained (NJ0138) Aeric Haplaquepts ¹ .	Mesic	P	0-0.5	Oct-Jun	<6.0	None-Occasional.	Brief	Jan-Apr	2B3	0-3% Drained. Undrained	3W 4W
Frost, Ponded (LA0087) Typic Glossoqualfs.	Thermic	P	+2-0	Jan-Dec	<6.0	Frequent	V Long ..	Jan-Dec	2B3,3	All	7W
Galt, Cool (CA2475) Typic Chromoxererts ¹ .	Thermic	MW	+1-0.5	Dec-Mar	<6.0	None-Rare ..	.....	.....	3	Map 15-18	3W
Gothenburg, Sandy (NE0392) Typic Psammaquepts.	Mesic	P	0-2.0	Nov-Jun	≥6.0	Common	Brief	Jan-Jun	2B2	All	7W
Granby, Clayey Substratum (MI0623) Typic Haplaquolls.	Mesic	P,VP	+1-1.0	Nov-Jun	≥6.0	None .....	.....	.....	2B2,3	Drained undrained.	4W 5W
Haggerty, Clayey Surface (LA0203) Aeric Ochraqualfs.	Thermic	SP	0-1.5	Nov-Jun	<6.0	Rare-Common.	V Long ..	Nov-Jun	2A,4	Freq	5W 2W 3W 4W
Halleck, Thick Surface (NV2669) Cumulic Haplaquolls ^{1,2} .	Frigid	P	1.5-2.5	Feb-Jul	<6.0	Frequent	Long	Mar-Jun	4	Occas, SIC Occas, SIC Freq	5W
Haslie (MN0629) Limnic Borosaprists.	Frigid	VP	0-1.0	Nov-Jul	<6.0	None .....	.....	.....	1	Drained ... Undrained	4W 6W
Haslie, Ponded (MN0630) Limnic Borosaprists.	Frigid	Vp	+2-0	Jan-Dec	<6.0	None .....	.....	.....	1,3	All	8W
Hedman (MN0661) Typic Calciaquolls.	Frigid	P	0-2.0	Apr-Jul	<6.0	None .....	.....	.....	2B3	Drained ... Undrained	2W 4W
Hedman, Depressional (MN0662) Typic Calciaquolls.	Frigid	VP	+2-0.5	Apr-Jul	<6.0	None	2B3, 3	Drained ... Undrained	3W 6W

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Continued

[Revised January 31, 1993]

Series and sub-group	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and sub-class
Herdcamp (SD0489) Typic Haplaquolls.	Mesic	VP	0-1.0	Apr-Oct	<6.0	Frequent	Brief	Mar-Nov	2B3	All	6W
Hershal, Occasionally Flooded (OR1473) Cumulic Haplaquolls.	Mesic	P	0.5-1.5	Mar-Jun	<6.0	Occasional ...	Brief	Mar-Jun	2B3	All	3W
Hosford (FL0571) Cumulic Humaquepts.	Thermic	VP	0-0.5	Dec-Sep	<6.0	None .....	.....	.....	2B2	2-8%	6W 8-12%
Hulderman (NV2655) Duric Haplaquolls ² .	Mesic	P	1.5-2.0	Mar-Jun	<6.0	Frequent	Long	Mar-Jun	4	NIRR	7W
Iksigiza (AK0371) Histic Pergelic Cryaquepts.	Cryic	P	0-1.5	Jan-Dec	<6.0	None .....	.....	.....	2B3	0-7%	5W 7-30%
Isanti, Depressional (MN0651) Typic Haplaquolls.	Frigid	VP	+1-1.0	Oct-Jun	<6.0	None .....	.....	.....	2B3.3	Drained ...	4W Undrained 6W
Jacktone, Ponded (CA2466) Typic Pelloxererts ¹ .	Thermic	SP	+1-0	Dec-Apr	<6.0	Occasional ...	Long	Dec-Apr	2A,3	All	3W
Jacktone, Ponded, Protected (CA2467) Typic Pelloxererts ¹ .	Thermic	SP	+1-0	Dec-Apr	<6.0	Rare .....	.....	.....	2A,3	All	3W
Jebavy (MI0617) Aeric Haplaquods.	Mesic	P	+1-1.0	Oct-Jun	≥6.0	None .....	.....	.....	3B1.3	Drained ...	4W Undrained 5W
Jebavy, Sandy Surface (MI0633) Aeric Haplaquods.	Mesic	P	+1-1.0	Oct-Jun	≥6.0	None .....	.....	.....	2E1.3	Drained ...	4W Undrained 5W
Joseph, Occasionally Flooded (WA1926) Aquic Xerofluvents ² .	Mesic	MW	3.0-5.0	Dec-Jun	≥6.0	Frequent	Long	Dec-Jun	4	Freq	6W
Kanona, Poorly Drained (NY0058) Aric Haplaquepts ¹ .	Mesic	P	0-0.5	Dec-Jun	<6.0	None .....	.....	.....	2B3	Undrained Drained ...	3W 3W
Kechumstuk (AK0378) Histic Cryaquepts.	Crytic	VP	0-1.0	Jan-Dec	<6.0	None-Rare ...	.....	.....	2B3	0-2%	5W
Kechumstuk, Gravelly Substratum (AK0379) Histic Cryaquepts.	Crtic	VP	0-1.0	Jan-Dec	<6.0	None-Rare ...	.....	.....	2B3	0-2%	5W

SOILS ON THE JANUARY 93 HYDRIC LIST, BUT NOT ON THE OCTOBER 91 HYDRIC LIST (THE "HYDRIC CRITERIA NUMBER" COLUMN INDICATES WHAT CAUSED THE SOIL TO BE INCLUDED IN THE HYDRIC LIST. SEE THE "CRITERIA FOR HYDRIC SOILS" TO DETERMINE THE MEANING OF THIS COLUMN.)—
Continued

[Revised January 31, 1993]

Series and sub-group	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and sub-class
Keyes, Terrace (CA2471) Abruptic Durixeralfs ¹ .	Thermic	MW	+1-1.5	Dec-Mar	<6.0	None .....	.....	.....	3	2-5%	4S
										5-15%	4E
Kezan, Overwash (NE0383) Mollic Fluvaquents.	Mesic	P	1.0-3.0	Nov-Jun	<6.0	Common	Brief	Mar-Jul	2B3	Occas	4W
										Channeled, Freq	5W
Kindanina (AK0372) Pergelic Cryaquepts.	Cryic	P	0-1.5	Jan-Dec	<6.0	None .....	.....	.....	2B3	0-7%	5W
										7-30%	6W
										30-35%	7W
Kolda, Drained (NV2672) Typic Haplaquolls.	Mesic	VP	+1-2.0	Apr-Jun	<6.0	None .....	.....	.....	2B3,3	All	5W
Kolda, Ponded (NV2673) Typic Haplaquolls.	Mesic	VP	+3-0	Jan-Dec	<6.0	None .....	.....	.....	2B3,3	All	5W
Kratka, Stratified Substratum (MN0640) Typic Haplaquolls.	Frigid	P	1.0-5.0	Apr-Jul	<6.0	None .....	.....	.....	2B3	All	3W
Kratka, Stratified Substratum, Depressional (MN0641) Typic Haplaquolls.	Frigid	VP	+1-1.0	Apr-Jul	<6.0	None .....	.....	.....	2B3,3	Drained	4W
										Undrained	6W
Lamoose, Calcareous (MT1325) Typic Haplaquolls.	Frigid	P	0.5-2.0	Apr-Jul	<6.0	None-Rare .....	.....	.....	2B3	0-2%	5W
Lamson, Maat <50, Mucky Surface (NY0079) Aeric Haplaquepts.	Mesic	P, VP	+1-0.5	Dec-May	<6.0	None .....	.....	.....	2B3,3	All	5W
Langless (ID1756) Typic Calcicquolls.	Mesic	P	1.0-1.5	Oct-Jun	<6.0	Frequent	V Long ..	Oct-Jun	2B3,4	0-2%	5W
Laugenour, Flooded (CA2485) Aeric Fluvaquents ¹ .	Thermic	P	1.0-2.0	Dec-Mar	<6.0	Frequent	V Long ..	Dec-Mar	2B3,4	Map>16	4W
Leafriver, High PPT (MN0652) Histic Humaquepts.	Frigid	VP	+1-1.0	Nov-Jul	<6.0	None .....	.....	.....	2B3,3	Undrained	6W
										Drained	4W
Leaksville (NC0118) Typic Albaqualls.	Thermic	P	0-1.0	Dec-Mar	<6.0	None .....	.....	.....	2B3	All	3W
Leon, Depressional (FL0501) Aeric Haplaquods.	Thermic	VP	+2-0	Jan-Sep	<6.0	None	2B3,3	All	7W

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Continued

[Revised January 31, 1993]

Series and sub-group	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and sub-class
Leon, Hydric (FL0093) Aerlic Haplaquods.	Thermic	P	0-0.5	Feb-Sep	<6.0	None .....	.....	.....	2B3	All	4W
Leon, Hydric (FL0564) Aerlic Haplaquods.	Thermic	P	0-0.5	Jun-Feb	<6.0	None .....	.....	.....	2B3	All	4W
Limerick, Sandy Substratum (VT0122) Typic Fluvaquents.	Mesic	P	0-1.5	Nov-May.	<6.0	Frequent	Brief	Nov-May.	2B3	Drained Undrained	3W 4W
Lodgepole, Ponded (NE0414) Typic Argiaquolls.	Mesic	SP	+2-1.0	Mar-Jul	<6.0	None .....	.....	.....	2A,3	All	5W
Logan, Commonly Flooded (UT1872) Typic Calciaquolls ¹ .	Mesic	P	1.0-1.5	Apr-Jun	<6.0	Common	Brief	Mar-May.	2B3	All	5W
Madalin, Gravelly Substratum (NY0518) Mollic Ochraqualfs.	Mesic	P, VP	+5-0	Nov-Jun	<6.0	None .....	.....	.....	2B3,3	SICL, SIL, SIC. MK	4W 5W
Malin, Rarely Flooded (OR1495) Fluvaquentic Haplaquolls.	(Mesic)	P	+1-4.0	Mar-Jun	<6.0	Rare .....	.....	.....	2B3,3	ALL	4W
Marcus (CA0360) Vertic Haplaquepts.	Thermic	VP,P	1.0-3.0	Dec-Mar	<6.0	None-rare ...	.....	.....	2B3	Mod Alkali Str Alkali ..	4W 6W
Marcuse, Sodic Overwash (CA1495) Vertic Haplaquepts.	Thermic	P	1.0-3.0	Dec-Mar	<6.0	None-rare ...	.....	.....	2B3	ALL	4W
Mariel (OR1515) Sapric Borohemists.	Frigid	VP	+2-.0.5	Jan-Dec	<6.0	.....	.....	.....	1,3	ALL	5W
Markey, Commonly Flooded (MI0635) Terric Borosoprists.	Frigid	VP	+1-1.0	Nov-Jun	<6.0	Common	Brief	Mar-Nov	1	ALL	6W
Markey, Frequently Flooded (MI0619) Terric Borosaprists.	Frigid	VP	0-2.0	Nov-Jun	<6.0	Common	Long	Mar-Jun	1	ALL	6W
Markey, MAAT<44 (MI0629) Terric Borosaprists.	Frigid	VP	+1-1.0	Nov-Jun	<6.0	None .....	.....	.....	1	Undrained Drained	5W 4W
Massena, Poorly Drained (NY0020) Aerlic Haplaquepts ¹ .	Mesic	P	0-1.0	Nov-May.	<6.0	None	2B3	0-8% Drained. 8-15%	3W 3E 4W

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Continued

[Revised January 31, 1993]

Series and sub-group	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and sub-class
Mazie (ID1350) Typic Unbraqualfs.	Frigid	VP	0-1.5	Feb-Jun	<6.0	Frequent	Long	Feb-May.	2B3,4	ALL	5W
Meadowbrook, Limestone Substratum, Flooded (FL0567) Grossarenic Ochraqualfs 1.	Thermic	VP	0-0.5	Jun-Dec	≥6.0	Common	Long	Jul-Nov	2B1,4	ALL	5W
Merryville (LA0206) Typic Glossaqualfs.	Thermic	P	0-1.5	Dec-Apr	<6.0	Rare Occasional.	Brief-Long.	Dec-Apr	2B3	Rare	3W Occas
Minter, Ponded (AL0149) Typic Ochraqualfs.	Thermic	P	+3-1.0	Jan-Dec	<6.0	Non-frequent	Brief-Long.	Dec-Apr	2B3,3,4	ALL	7W
Misteguy (M0611) Aeris Haplaquepts.	Mesic	P	0-1.0	Oct-May	<6.0	Rare-Common.	Brief-V Long.	Oct-Jun	2B3,4	Rare, drained. Freq, Drained. Occas, drained. Undrained	3W 3W 3W 5W
Mollville, Loamy Substratum (TX1252) Typic Glossaqualfs.	Thermic	P	+5-1.0	Nov-Jun	<6.0	None .....	.....	.....	2B3,3	ALL	4W
Monarda, Rubbly (ME0136) Aeris Haplaquepts.	Frigid	P	0-1.5	Oct-Jun	<6.0	None .....	.....	.....	2B3	ALL	7S
Müllers (SC0147) Aeris Fluvaquepts 2.	Thermic	SP	0.5-1.5	Nov-May.	<6.0	Frequent	Long	Dec-Apr	4	FREQ	6W
Naconiche (TX1236) Cumulic Humaquepts.	Thermic	VP	0-1.0	Jan-Dec	<6.0	Frequent	Long-V Long.	Jan-Dec	2B3,4	ALL	7W
Newiang (W0472) Humaqueptic Psammaquepts.	Mesic	P,VP	+1-1.0	Nov-Jun	<6.0	Occasional ...	Brief	Apr-Jun	2B,3	Drained ... Undrained	4W 6W
Niblack (AK0368) Lithic Cryosaprists.	Cryic	VP	0-1.0	Jan-Dec	>6.0	None .....	.....	.....	1	0-45%	7W
Nikiavar (AK0357) Typic Cryaquepts.	Cryic	VP	1.0-2.0	Apr-Oct	<6.0	Occasional ...	Brief-Long.	Apr-Oct	2B3	0-3%	4W
Normal (IL0447) Argiaquic Argialbolls.	Mesic		1.0-3.0	Mar-Jun	<6.0	None .....	.....	.....	2B3	0-2%	2W 2E
OAKY (FL0108) Mollic Albaqualfs.	Thermic	P	0.5-1.5	Mar-Sep	<6.0	None .....	.....	.....	2B3	None	4W
OKAW, Nonflooded (IL0445) Typic Albaqualfs.	Mesic	P,VP	+5-1.0	Mar-Jun	<6.0	None	2B3,3	0-2%	3W

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Continued

[Revised January 31, 1993]

Series and sub-group	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and sub-class
Overcup (AR0131) Vertic Albaqualfs.	Thermic	P	0-1.0	Dec-Apr	<6.0	None .....	.....	.....	2B3	0-1%	3W
										1-30%	3E
										0-3%	3W
Ozamis, Saline (OR1384) Fluvaquentic Haplaquolls ¹ .	Mesic	P	1.0-4.0	Mar-Jun	<6.0	Rare .....	.....	.....	2B3	All	5W
Pamlico, Loamy Substratum, Pondered (NC0270) Terric Medisaprists.	Thermic	VP	+2-0	Jan-Dec	<6.0	Rare .....	.....	.....	1,3	All	7W
Perrine, Drained (FL0572) Typic Fluvaquents.	Hyperthermic.	P	0-1.0	Jun-Nov	<16.0	None .....	.....	.....	2B3	All	3W
Perry (LA0091) Vertic Haplaquepts.	Thermic	P	0-2.0	Dec-Jun	<6.0	Common	Brief-V Long.	Dec-Jun	2B3,4	Occas	4W
										Freq	5W
PIT, Overwash (CA2440) Chromic Pelloxererts.	Mesic	P	+5-3.0	Dec-May.	<6.0	Rare .....	.....	.....	2B3,3	All	5W
PIT, Partially Drained (CA2441) Chromic Pelloxererts.	Mesic	P	0.5-4.0	Dec-May.	<6.0	Rare .....	.....	.....	2B3	All	4W
PIT, Rarely Flooded (CA2348) Chromic Pelloxererts.	Mesic	P	+5-3.0	Dec-May.	<6.0	Rare .....	.....	.....	2B3,3	All	5W
Ponycreek (WI0434) Humaqueptic Psammaquent-s.	Frigid	P,VP	+1-1.0	Nov-Jun	<6.0	None .....	.....	.....	2B3.3	Undrained Drained	6W 4W
Pottsburg, Hydric (FL0098) Grossarenic Haplaquods ¹ .	Thermic	P	0-0.5	Feb-Sep	≤6.0	None-Occasional.	V Brief ..	Feb-Sep	2B1	All	4W
Racing (OR1512) Typic Cryaquods.	Cryic	P	+1-1.0	Jan-Dec	<6.0	Occasional ...	Brief	Nov-Apr	2B3,3	All	6W
Rawhide (FL0110) Typic Argiaquolls.	Thermic	VP	+2-0	Jun-Apr	<6.0	None-Common.	Long	Jun-Apr	2B3,3,4	All	7W
Rawhide, Limestone Substratum (FL0113) Typic Argiaquolls.	Thermic	VP	+2-0	Jun-Apr	<6.0	None-Common.	Long	June-Apr.	2B3,3,4	All	7W
Raynham, Calcareous Substratum (VT0121) Aeric Haolaquepts.	Mesic	P, SP	0-2.0	Nov-May.	<6.0	None-Rare	2B3	Drained	3W
										Undrained	4W

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Continued

[Revised January 31, 1993]

Series and sub-group	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and sub-class
Reese, None-Rarely Flooded (NV2566) Aeric Halaquepts ¹ .	Mesic	P	1.0-3.0	Mar-Jul	<6.0	None-Rare ...	.....	.....	2B3	All	6S
Reese, Ponded (NV2567) Aeric Halaquepts ¹ .	Mesic	P	+1-2.0	Nov-Aug	<6.0	Rare- .....	.....	.....	2B3,3	All	6W
Rodney (IA0605) Mollic Fluvaquepts.	Mesic	P	1.0-3.0	Nov-Jul	<6.0	Rare-Occasional.	Brief	Feb-Nov	2B3	Rare	1 Occas
Roscommon, Nonponded (MI0422) Mollic Psammaquepts.	Frigid	P	01.0	Sep-Jun	≥6.0	None .....	.....	.....	2B2	All	4W
Rubylake (NV2645) Mollic Fluvaquepts ¹ .	Mesic	P	1.0-2.0	Mar-Jun	<6.0	Rare .....	.....	.....	2B3	All	5W
Rutlege (SCO148) Typic Humaquepts.	Thermic	VP	0-0.5	Dec-May.	≥6.0	None-Common.	Brief	Dec-May.	2B2	Drained	4W Undrained
Rutlege, Ponded (SCO149) Typic Humaquepts.	Thermic	VP	+2-1.0	Dec-May.	≥6.0	None .....	.....	.....	2B2, 3	Drained	4W Undrained
Sabattis (NY0401) Histic Humaquepts.	Frigid	P, VP	0-1.0	Nov-May.	<6.0	None .....	.....	.....	2B3	Undrained	4W Drained
Sabattis, Stony (NY0405) Histic Humaquepts.	Frigid	P, VP	0-1.0	Nov-May.	<6.0	None .....	.....	.....	2B3	STV, BYV STX, BYX	6S 7S
Sahkahtay (MN0669) Mollic Ochraqualfs.	Frigid	P	0.5-1.5	Apr-Jun	<6.0	None .....	.....	.....	2B3	Drained	3W Undrained
Sailboat, Cool (CA2478) Aquic Xerofluvents ¹ .	Thermic	SP	3.0-5.0	Dec-Mar	<6.0	Frequent	Long	Dec-Mar	4	MAP>16 ...	4W
Samsula, Flooded (FL0112) Terric Medisaprists.	Hyper-Thermic.	VP	0-0.5	Mar-Sep	≥6.0	Frequent	Brief-Long.	.....	1	All	7W
Sapelo, Hydric (GA0100) Ultic Haplaquods ¹ .	Thermic	P	0-0.5	Nov-Apr	<6.0	None .....	.....	.....	2B3	All	4W
Satilla (GA0067) Thapto-Histic Fluvaquepts.	Thermic	VP	0-1.5	Nov-May.	<6.0	None-Common.	Long	Dec-Apr	2B3, 4	None, Rare. Freq	4W 7W
Settlement, Stratified Substratum (NV5407) Aeric Halaquepts.	Mesic	P	1.0-2.5	Feb-Jun	<6.0	Frequent	Long	Mar-Jun	2B3, 4	All	7W

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[Revised January 31, 1993]

Series and sub-group	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and sub-class
Settemeyer, Wet (NV2677) Fluvaquentic Haplaquolls ¹ .	Mesic	P	1.0-2.5	Feb-Jul	<6.0	Rare .....	.....	.....	2B3	All	6W
Shigh (OR1484) Aeris Albaquolls.	Isomesic	P	0.5-1.0	Nov-Apr	<6.0	None .....	.....	.....	2B3	All	6E
Springerton (IL0428) Typic Haplaquolls.	Mesic	P	+5-2.0	Feb-Jun	<6.0	Non-Rare .....	.....	.....	2B3, 3	All	2W
Stockton, Cool (CA2482) Typic Pelloxererts ¹ .	Thermic	SP	+1 -1.0	Dec-Mar	<6.0	Occasional ...	Brief	Jan-Mar	2A,3	Map>16	3W
Stockton, Map>16 (CA2481) Typic Pelloxererts ¹ .	Thermic	SP	+1 -1.0	Dec-Mar	<6.0	None-Rare ...	.....	.....	2A,3	Map>16	3W
Stockton, Ponded (CA2469) Typic Pelloxererts ¹ .	Thermic	SP	+1 -0	Nov-Mar	<6.0	Occasional ...	Long	Dec-Apr	2A,3	All	3S
Stockton, Ponded, Protected (CA2468) Typic Pelloxererts ¹ .	Thermic	SP	+1 -0	Nov-Mar	<6.0	None-Rare ...	.....	.....	2A,3	All	3S
Strathcona (MN0633) Typic Calciaquolls.	Frigid	P	1.0-3.0	Apr-Jul	<6.0	None .....	.....	.....	2B3	Drained Undrained	2W 4W
Strathcona, Depressional (MN0634) Typic Calciaquolls.	Frigid	VP	+1.-1.0	Jan-Dec	<6.0	None .....	.....	.....	2B3,3	Drained Undrained	3W 6W
Swedegrove (MN0673) Typic Haplaquolls.	Mesic	P	1.0-3.0	Nov-Jul	<6.0	None .....	.....	.....	2B3	All	2W
Talmoon (MN0592) Mollic Ochraqualls.	Frigid	P	1.0-3.0	Nov-Jun	<6.0	None .....	.....	.....	2B3	All	2W
Talmoon, Stratified Substratum (MN0664) Mollic Ochraqualls.	Frigid	P	1.0-3.0	Nov-Jun	<6.0	None .....	.....	.....	2B3	All	2W
Tanacross (AK0383) Histic Pergelic Cryaquepts.	Cryic	P	0-1.0	Jan-Dec	<6.0	None-Rare ...	.....	.....	2B3	0-3%	5W
Tennille (FL0084) Lithic Psammaquents.	Thermic	P	0.5-1.5	Mar-Sep	≥6.0	None	2B2	All	4W

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Continued

[Revised January 31, 1993]

Series and sub-group	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and sub-class
Vassalboro (ME0142) Typic Borofibrists.	Frigid	VP	0-0.5	Sep-Jul	<6.0	None-Rare ...	.....	.....	1	All	8W
Waldron, Loamy Substratum (M00213) Aeric Fluvaquents ² .	Mesic	SP	1.0-3.0	Nov-May.	<6.0	Frequent	Long	Dec-May.	4	Freq,Long	5W
Watab (MN0284) Arenic Ochraqualfs.	Frigid	P	0.5-2.0	Mar-Jun	≥6.0	None .....	.....	.....	2B2	All	3W
Wheatbelt (MT1353) Udorthentic Pellusterts.	Frigid	P	+5-1.0	Apr-Sep	<6.0	None .....	.....	.....	2B3,3	0-1%	6W
Yearian (ID1531) Typic Haplaquolls.	Frigid	P	0.5-1.5	Apr-Jun	<6.0	Occasional ...	Brief	Apr-Jun	2B3	0-4%	5W
Yearian, Sloping (ID1800) Typic Haplaquolls.	Frigid	P	1.0-1.5	Jan-Jun	<6.0	None .....	.....	.....	2B3	All	5W
Yogaville (VA0379) Fluvaquentic Haplaquolls.	Thermic	P	0-1.0	Dec-May.	<6.0	Common	V Brief-Brief.	Dec-May.	2B3	Occas, drained. Occas, undrain- ed. Freq, drained. Freq, undrain- ed	2W 4W 3W 6W
ZeeGee (ID1697) Typic Haplaquolls.	Frigid	P	0.5-1.5	Mar-Jul	<6.0	Occasional ...	Brief	Apr-Jun	2B3	All	5W
Zipp, Loamy Substratum, Flooded (IN0550) Typic Haplaquents.	Mesic	VP	+5-1.0	Dec-May.	<6.0	Frequent	Brief	Dec-May.	2B3,3	All	3W

¹ Some soil interpretation records representing phases of this series are not hydric.

² Some phases of this soil are not frequently flooded of long duration.

³ some drainage classes for this soil are not hydric.

[FR Doc. 93-24470 Filed 10-5-93; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Northwest Native American Business Development Center (Northwest NABDC)

AGENCY: Minority Business Development Agency, DOC.

ACTION: Notice.

SUMMARY: In accordance with Executive order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Native American Program. The total cost of performance for the first budget period (12 months) from February 1, 1994 to January 31, 1995 is estimated at \$205,000. The NABDC will operate in the Washington, Oregon, and Idaho Geographic Service Area.

The funding instrument for the NABDC will be a cooperative agreement. Competition is open to

individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The Native American program provides business development services to the Native American business community to help establish and maintain viable Native American businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of Native American individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as

a conduit of information and assistance regarding Native American business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of Native American businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the numbers of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an NABDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is November 10, 1993. Applications must be postmarked on or before November 10, 1993.

The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. Telephone: 415/744-3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105 on October 27, 1993 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744-3001.

SUPPLEMENTARY INFORMATION:

Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640-0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply

with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of NABDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants) and the related section of the certification form prescribed above applies."

Anti-Lobbying

Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than \$100,000.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered

transactions at any tier under the award to submit, if applicable, a completed Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD-512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by an tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.801 American Indian Program
(Catalog of Federal Domestic Assistance)

Dated: September 29, 1993.

Xavier Mena,

Regional Director, San Francisco Regional
Office.

[FR Doc. 93-24556 Filed 10-5-93; 8:45 am]

BILLING CODE 3510-21-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 5,098,573 (Ser. No. 7-730,014), titled "Binary Concentration and Recovery Process," to Custom Industrial Analysis (CIA) Laboratories, having a place of business in St. Joseph, MO. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. While the primary purpose of this notice is to announce NTIS' intent to grant an exclusive license to practice Patent No. 5,098,573, it also serves to publish said patent's availability for licensing in accordance with law. The prospective exclusive license may be granted unless, within ninety days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention describes a binary process for the concentration and recovery of contaminants from an aqueous environment by submerging lipids inside a thin non-porous

polymeric film enclosure in an aqueous environment to concentrate the contaminants in the lipids and polymeric film; and, recovering contaminants or impurities from the first part or from other contaminated lipids or biogenic extracts by submerging the polymeric film enclosed materials in a solvent medium.

A copy of the above-identified patent may be purchased from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231 for \$3.00 (payable by check or money order).

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent
Licensing.

[FR Doc. 93-24464 Filed 10-5-93; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of the second phase of the TRICARE Tidewater Managed Care Demonstration Project.

SUMMARY: Notice was previously given in the Federal Register (57 FR 40177-40181) of September 2, 1992, that a demonstration project will be conducted by the three military services, under the provisions of title 10, United States Code, section 1092, to test a different method for financing and delivery health care services under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). This demonstration project is also authorized by section 712(b) of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190. The first phase for the delivery of services under the demonstration, hereafter referred to as TRICARE, began on October 1, 1992, for all beneficiaries who reside in the designated zip codes identified in Table 1, hereafter referred to as the Tidewater region or Tidewater service area of Virginia (which incorporates Naval Hospital Portsmouth, Virginia; McDonald Army

Community Hospital at Fort Eustis; The First Medical Group, Langley AFB). The current CHAMPUS Fiscal Intermediary (FI) contract has been modified under the authority of 10 United States Code, section 1079(n). An ongoing evaluation of the demonstration is being conducted by the Center for Naval Analyses (CNA) in conjunction with the Office of the Assistant Secretary of Defense (Health Affairs). This notice is to announce the second phase of the project to begin 30 days from the date of this notice and to make some modifications to the previous notice published September 2, 1992. TRICARE is a Tri-service Managed Care initiative under the direction of the commanders of the three military treatment facilities (MTFs) and administered by the TRICARE project office. TRICARE will be responsible for the administration of all CHAMPUS funds in the Tidewater area except mental health services. Mental Health services will be folded under TRICARE at the time of the completion of the current Contracted Provider Arrangement mental health services contract. Direct health care funds will be retained by the respective services and individual MTF commanders. The Navy has been appointed by the Assistant Secretary of Defense (Health Affairs) to act as the Executive Agent. The TRICARE Project provides alternatives for the financing and delivery of health care services under CHAMPUS. It represents structural reform, centered on the principles of managed care and the coordination of the military-civilian health care partnership. The demonstration relies on a coordinated consortium of private companies, the three military services, and other Federal health care delivery organizations to deliver medical care to all eligible beneficiaries residing in the Tidewater region of Virginia. The objectives of the demonstration are to enhance beneficiary access to care, curb health care cost growth, strengthen quality assurance activities, and improve coordination between the military and civilian components of the Military Health Services System (MHSS).

DATES: November 5, 1993, eligible health care beneficiaries in the Tidewater region of Virginia, when offered, may elect to enroll in a managed care option called TRICARE Prime. TRICARE Extra was available on October 1, 1992, and standard CHAMPUS (TRICARE Standard) is still available for beneficiaries who choose neither of the previous two managed care options.

FOR FURTHER INFORMATION CONTACT:

Captain W.T.T. Hood, U.S. Navy,
TRICARE Office, 5425 Robin Hood
Road, suite 203, Norfolk, VA 23513,
telephone (804) 677-6440.

SUPPLEMENTARY INFORMATION: Under the TRICARE demonstration, CHAMPUS eligible beneficiaries in the Tidewater Region of Virginia, as qualified and within the parameters identified below, will be able to choose among three options. They may enroll in the managed care option (TRICARE Prime); they may use the preferred provider network on a case-by-case basis (TRICARE Extra); or they may remain in the standard CHAMPUS benefit plan, called TRICARE Standard. All active duty will be considered enrolled in TRICARE Prime. All current laws and regulations applicable to active duty members remain in effect. Medicare eligible beneficiaries may enroll in certain features of TRICARE Prime, when offered, or use the preferred provider network; however, care rendered by civilian providers will be handled exclusively under the Medicare Program and subject to Medicare rules, procedures, and reimbursement rates. Non-active duty, non-Medicare, non-CHAMPUS eligible beneficiaries, such as certain former spouses, some categories of dependents, and Secretarial designees, who enroll in TRICARE Prime will be entitled to use of the Health Care Finder services to assist in locating providers. All beneficiaries who do not enroll in TRICARE Prime or use network providers remain free to use any military hospital on a space available basis, as presently authorized. Enrollees in TRICARE Prime will obtain the majority of their care within the network and pay reduced CHAMPUS cost shares when they receive care from civilian providers. Authorization from TRICARE will be required by TRICARE Prime enrollees who want to use health care providers outside the network. Also, authorization will be required from the primary care manager by TRICARE Prime enrollees who need any specialty care. Beneficiaries will have the greatest freedom of choice, for the most part, by choosing the TRICARE Standard option. All current CHAMPUS rules still apply under this option. TRICARE Standard beneficiaries will face standard CHAMPUS cost sharing requirements, except that their coinsurance percentages will be lower when they use the preferred provider network (TRICARE Extra).

The Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) has modified

the CHAMPUS Mid-Atlantic Fiscal Intermediary's contract with Blue Cross and Blue Shield of South Carolina (BCBS/SC), a private health insurance company headquartered in Columbia, South Carolina. BCBS/SC has established the initial portion of the required preferred provider network, comprised of health care providers and institutions that offer discounts off the normal CHAMPUS rates and are both CHAMPUS and, when possible and necessary, Medicare Participating Providers. BCBS/SC will continue to refine and maintain the network and will continue to process CHAMPUS claims for all beneficiaries who reside in the Tidewater region. All negotiated CHAMPUS rates for both professional services and in-patient procedures will be applicable to services provided to active duty members and other under the supplemental program, unless a lower rate has been previously negotiated. The negotiated charges for individual professional services under the terms of the demonstration, shall be included with all billed charges for purposes of establishing the prevailing charge.

The enrollment system, which will be available 30 days from the date of this notice, represents one of four cornerstones of TRICARE Prime. This option will enable the military treatment facility commanders to identify beneficiaries who rely upon the more closely coordinated military and civilian provider systems as their source of health care and to marshal resources most effectively to meet their health care needs.

Another cornerstone includes the primary care manager (PCM) process and the Health Care Finder (HCF) functions. TRICARE Prime enrollees will have a PCM as a regular point-of-service for most health care needs. The PCM will refer patients for needed specialty care to an MTF or civilian network provider. In this regard, the PCM will be complemented by the TRICARE Service Center (TSC), an administrative office to support the specialty referral process. TRICARE Standard enrollees will be encouraged to use the services of the TSC, including the preferred provider network. The HCF function will be provided at centers established at each military hospital within the designated service area. BCBS/SC has established a service center near Naval Hospital Portsmouth. HCFs will continue to help beneficiaries obtain appointments for services in the most appropriate setting, whether in a military facility or with civilian providers, facilitate beneficiary access to care, and help ensure optimal use of

military hospitals. For the most part, the MTFs will be considered the most preferred providers. The service centers will also serve as a source of information and will assist beneficiaries with resolution of claims problems. The use of the service centers has been available since October 1, 1992. These centers will be available to assist in the enrollment process of beneficiaries in the TRICARE Prime managed care option. Marketing material will be provided before the enrollment process is initiated.

The third cornerstone of TRICARE is the preferred provider network, comprised of a wide array of qualified health care providers. The civilian preferred provider will agree to follow established rules and procedures for sound utilization management, maintain close coordination with the military facility, provide affordable and high quality care. Providers who agree to be PCMs must follow the rules and procedures of the TRICARE Prime to include all aspects of being a participating provider, to refer patients to specialty care only when necessary, to consider the MTFs the most preferred providers, and to provide education on preventive measures and health lifestyles to beneficiaries as appropriate.

The fourth cornerstone of TRICARE is the comprehensive quality management program that will attempt to balance optimization of resources with high quality care across the Tidewater region. The new CHAMPUS Regional Review Center, the Medical Society of Virginia Review Organization (MSVRO), will use national standards for utilization review and peer review of selected cases. TRICARE will ensure adherence to all rules applicable to this program. A separate CHAMPUS National Quality Monitoring Contract will oversee the review process.

TRICARE Prime

This is a voluntary, enrollment option offered as an alternative to standard CHAMPUS. TRICARE Prime provides enhanced CHAMPUS benefits to all enrolled beneficiaries. 30 days from the date of this notice, the TRICARE Prime will be offered to the initial category of beneficiaries who reside throughout the TRICARE service area. The benefits package available to enrollees will contain the same benefits as are available under standard CHAMPUS, plus benefit enhancements offered by TRICARE. These enhancements will include such services as periodic examinations and preventive care procedures not covered under standard CHAMPUS. They are identified in table 2. The mental health cost shares will be

applicable at the expiration of the current contract for mental health services. The medical benefits will be uniform across all areas of the Tidewater region. This plan requires an annual enrollment fee, in lieu of the normal CHAMPUS deductible, that will apply for the entire year (See table 3). Medicare-eligible beneficiaries, and other non-CHAMPUS eligible beneficiaries, who wish to enroll in TRICARE Prime are exempt from the enrollment fee and from all restrictions regarding use of providers. CHAMPUS eligible beneficiaries who select TRICARE Prime and who use the preferred provider network will have the added benefit of not having to file claims forms, and they will not be balance billed for their care. They will be given the opportunity to register a preference for assignment to a PCM. A PCM may be an individual provider, a group practice, a clinic, a treatment site, or other designation. Beneficiary preference in assignment of a particular PCM will be honored subject to the availability of the choices. CHAMPUS eligible beneficiaries who enroll in TRICARE Prime must follow TRICARE's rules for seeking non-emergency medical care and other applicable rules. Failure to do so will result in denial of payment for the medical services received. If payment is denied for failure to follow TRICARE rules, the patient will be responsible for the full cost of the care they received. Appeals will be resolved by the TRICARE office and written procedures will be provided before the enrollment process begins. TRICARE Prime enrollees will agree to stay in the program for a full year, unless they move out of an area. Patients who are enrolled and who are not happy with a particular provider will be given the opportunity, in coordination with the TRICARE Service Center, to choose another one within the network once during the enrollment period. With special permission from TRICARE, a beneficiary may disenroll, but then cannot re-enroll until the next open season. Enrollment will be offered in a phased manner. Open season for dependents of active duty personnel whose sponsors are in the pay grades of E-4 or below begin 30 days from the date of this notice. Then, after a sufficient period of time, but not later than the winter of 1993, enrollment will be offered in a progressive manner to the next category of beneficiaries, dependents of active duty personnel whose pay grades are E-5 and above. Enrollment may be offered to remaining eligible beneficiaries after a period of time which will allow an assessment of

network capability. Enrollment of all family members will be strongly encouraged, but enrollment will be on an individuals basis. The enrollment fees will be collected annually from CHAMPUS eligible beneficiaries who choose to enroll, and this fee will be in lieu of the normal CHAMPUS deductible. The FI will be responsible for the collection of the enrollment fees. The enrollment fees are not refundable. However, under the circumstance when an active duty dependent is involuntarily moved from the TRICARE service area, pursuant to a government directed move, a pro-rated credit may be given toward the standard deductible in the fiscal intermediary region to where the beneficiary moved. Other unusual circumstances that may warrant a credit may be reviewed and authorized on a case-by-case basis by TRICARE. The proration will be based on a quarterly amount and credited toward the standard deductible for the fiscal year in which the move took place. In cases where an enrollee moves to another managed care site that has the same benefit structure, the beneficiary may maintain their enrollment status in the new site. If they decide not to maintain their enrollment status in the new site, a prorated credit will be applied to their standard CHAMPUS deductible, as identified above. Notices for re-enrollment will be sent in sufficient time to allow for payment of the annual enrollment fee. If the enrollment fee is not received by the expiration date, which will be the anniversary of the date of the initial enrollment, the beneficiary will be disenrolled automatically. A beneficiary will be considered enrolled: (1) When a PCM has been assigned, (2) appropriate entries have been made in the Composite Health Care System (CHCS) and Defense Enrollment and Eligibility Reporting System (DEERS), (3) the beneficiary is notified in writing of his/her enrollment with an effective date, and (4) appropriate fees have been paid. Enrollment will be effective on the first day of the month, after completion of the above. Under unusual circumstances, TRICARE may authorize enrollment retroactive the first day of the month in which the enrollment application was submitted. The following specific rules for TRICARE Prime enrollees apply: (1) Except for emergency care, enrollees must obtain all primary care from the PCM or another provider to whom the enrollee is referred by TRICARE. (2) For any necessary specialty care and all inpatient care of other than emergencies, the PCM, enlisting the

HCF, will assist in making an appropriate referral. All such non-emergency specialty and inpatient care must be approved with authorization from the PCM or HCF. The priority for specialty or inpatient care will be the local MTF. If the local MTF is unavailable for the services needed, the enrollee will be required to obtain the services at another TRICARE service area MTF. Access issues such as waiting times and geographic barrier will be considered in requiring treatment at another MTF. If needed services are available from the civilian portion of the network, the enrollee will be required to obtain the services from the network. Again, access issues such as waiting times and geographic barriers will be considered. In the event the needed services cannot be obtained through any of the above sources, the enrollee will receive approval from TRICARE to obtain the services from a CHAMPUS authorized civilian provider of the enrollee's choice, who is not affiliated with the TRICARE Prime network. Enrolled beneficiaries who desire care while outside of the TRICARE service area will require authorization, except for emergencies. If an authorization was not obtained prior to the delivery of services, a claim will be denied.

TRICARE Extra

This option was available from October 1, 1992. CHAMPUS beneficiaries who do not choose TRICARE Prime will be able to continue to participate in this preferred provider option. Beneficiaries who receive care from one of the network preferred providers will be entitled to a reduced level of cost-sharing. Changes from the previous Federal Register notice for the cost sharing under this option are identified in table 3. Under this option, patients will be covered for the same medical services as under standard CHAMPUS, and they will get discounts for office visits and hospital inpatient care by using providers who are members of the preferred provider network. Dependents of active duty service members, as an example, will pay 15 percent of the CHAMPUS negotiated reimbursement rate for a doctor's office visit in the contractor network instead of 20 percent required under standard CHAMPUS. Retirees and their families will pay 20 percent rather than 25 percent for office visits. For inpatient care, retirees will be required to pay \$200 per day (or 25 percent of the negotiated reimbursement rate), whichever is less, plus 20 percent of inpatient professional fees, instead of the current 25 percent. (See table 3) TRICARE Extra offers greater freedom of

choice than TRICARE Prime because patients do not have to enroll. CHAMPUS patients can elect to use this option on a case-by-case basis. Standard CHAMPUS deductibles continue to apply and rules regarding NAS requirements continue. As in TRICARE Prime, beneficiaries have the added benefit of not having to file claims forms for care received through the preferred provider network.

TRICARE Standard

This plan refers to standard CHAMPUS. TRICARE Standard will continue to be available in the Tidewater region to CHAMPUS beneficiaries who choose not to enroll or use the preferred provider network. All current rules and procedures continue to apply under this option.

The CHAMPUS Expanded Home Health Care—Case Management Demonstration is included in this project since TRICARE has been named the fourth demonstration site. This is a separate demonstration that will operate in tandem with other TRICARE initiatives. Details of this demonstration were given in the Federal Register on June 3, 1988 (53 FR 20359).

Duration

The TRICARE Demonstration project will continue for a minimum of three years from the start of the project on October 1, 1992. The modifications will remain in place for the duration of the BCBS/SC Mid-Atlantic Fiscal Intermediary contract and will be included in the successor contract.

Exclusions to the TRICARE Demonstration Project

The following are not covered under the demonstration:

- Mental Health care benefits will remain under the control of Tidewater Mental Health Contracted Provider Arrangement (CPA) Demonstration Project. All rules that are in place will continue to apply until the current contract expires. At which time, TRICARE will fold the new mental health program into this demonstration and the identified cost sharing (table 3) will be implemented.
- The Children With Disabilities Program is not affected by the selection of the enrollment options.
- Beneficiaries eligible under the Civilian Health and Medical Program of the Veterans Administration (CHAMPVA) are not covered under this demonstration.

All current CHAMPUS rules, unless this notice specifically provide otherwise, will continue to apply.

This notice reflects the changes under this demonstration which is expected to start 30 days from the date of this notice.

Dated: October 1, 1993.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

TRICARE Catchment Area ZIP Codes; 1993

ZIP Code City/Town/Area

23001	Achilles	23155	Severn
23003	Ark	23156	Shacklefords
23011	Barhansville	23157	Shadow
23013	Bavon	23158	Shanghai
23016	Beaverlett	23163	Susan
23017	Bellamy	23165	Syrinega
23018	Bena	23168	Toano
23020	Blakes	23169	Topping
23021	Bohannon	23175	Remlik
23025	Cardinal	23176	Wake
23031	Saluda	23178	Ware Neck
23032	Church View	23179	Warner
23035	Cobbs Creek	23180	Water View
23037	West Point	23181	West Point
23043	Deltaville	23183	White Marsh
23044	Deltaville	23184	Wicomico
23045	Diggs	23185	Williamsburg
23050	Dutton	23186	Williamsburg
23056	Foster	23187	Williamsburg
23061	Gloucester	23188	Williamsburg
23062	Gloucesterpt	23190	Woods XRDS
23064	Grimstead	23191	Zanoni
23066	Gwynn	23304	Battery Park
23068	Hallieford	23314	Carrollton
23070	Hardyville	23315	Carrsville
23071	Hartfield	23320	Chesapeake
23072	Hayes	23321	Chesapeake
23076	Hudgins	23322	Chesapeake
23079	Jamaica	23323	Deep Creek
23080	James Store	23324	Chesapeake
23081	Williamsburg	23325	Chesapeake
23085	King & Qn C	23326	Chesapeake
23089	Lanexa	23327	Chesapeake
23090	Lightfoot	23328	Chesapeake
23091	LTL Plymouth	23361	Hampton
23092	Locust Hill	23363	Hampton
23107	Maryus	23397	Isle Wight
23108	Shacklefords	23424	Rescue
23109	Mathews	23430	Smithfield
23110	Mattaponi	23432	Suffolk
23114	Miles	23433	Suffolk
23118	Mobjack	23434	Suffolk
23119	Moon	23435	Suffolk
23122	Naxera	23436	Suffolk
23125	New Point	23437	Holland
23127	Norge	23438	Whaleyville
23128	North	23439	Suffolk
23130	Onemo	23450	Va Beach
23131	Ordinary	23451	Va Beach
23133	Peary	23452	Va Beach
23136	Pinero	23453	Va Beach
23137	Plain View	23454	Va Beach
23138	Port Haywood	23455	Va Beach
23142	Redart	23456	Va Beach
23149	Saluda	23457	Blackwater
23154	Schley	23458	Va Beach
		23459	Ft Story
		23460	Va Beach
		23461	Va Beach
		23462	Va Beach
		23463	Va Beach
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		23479	Va Beach
		23481	Carrsville
		23487	Windsor

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 23681 Hampton
 23690 Yorktown
 23691 Yorktown
 23692 Grafton
 23693 Yorktown
 23694 Lackey
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TRICARE Prime Enhanced Benefits

There is no preauthorization required for the following services. The following services are expected of good comprehensive clinical practice. There is no co-payment expected nor is the provider expected to unbundle the services for an additional fee or inconvenience the patient by rescheduling the following services unnecessarily.

Routine history and physical examinations are no longer recommended for health promotion disease prevention in individuals who are not being monitored as a part of a therapeutic plan for chronic disease. In counterdistinction, the Preventive Services Task Force recommends that a variety of age and sex specific services be combined into periodic health promotion disease prevention surveillance examinations. These services are reflected below.

Services	Frequency or age interval
Lab, X-ray, Mammography	Screening blood lead level: once age 12 mos-6 yrs. Rubella antibodies: females, once age 12-18. Non-fasting total blood cholesterol: Every five yrs over 18. Fecal occult blood testing: Annually age 50 & over. Mammogram: Baseline age 40; every two yrs age 40-50; annually age 50 & over.
Pap smears	Annually over age 18 or younger, if sexually active
Eye exams/refractions	By primary care provider: red reflex, corneal light reflex, inspection: newborn-3 mos; 6 mos-12 mos: red reflex, corneal light reflex, inspection, differential occlusion, fixed and follow with each eye; Age 3-4: baseline optometric examination for amblyopia and/or strabismus; annual eye exams: age 5-17; every three yrs over age 18
Immunizations	DPT: 2 mos; 4 mos; 6 mos. DTaP (acellular) 15-18 mos; once age 4-6. OPV: 2 mos; 4 mos; 15-18 mos; once age 4-6. MMR: age 15 mos and once age 4-6 or 11-12; once after age 19 unless evidence of immunity. Td: once age 14-16; every 10 yrs thereafter. Pneumococcal vaccine: persons at increased risk due to other medical condition. HB: age 2, 4, 6, & 15 mos. PPD: 12 mos; after close contact with person with suspected TB. Hepatitis B: see schedule below for infants; once age 11-19 if not immunized as an infant.
Periodic health promotion disease prevention exams over 24 mos of age.	One eval. and followup during following age intervals: 2-4; 5-11; 12-17; 18-39; 40-64.
Blood pressure	Blood pressure during part of above exams. Clinical breast exam annually age 40 & above. Clinical testicular exam annually age 18 & over. Rectal prostate exam annually age 18 & over. Every two years age 18 & over.
Hearing screening	Otoacoustic emissions (OAE) screening: infant-before leaving hospital; Once age 2-5; Once age 6-10; Once age 12-17; Once age 40-59; Once age 60-65.
Sigmoidoscopy or colonoscopy	Once every 3-5 yrs over age 50.
Serologic screening of all pregnant women for HBsAg (hepatitis B surface antigen).	Infants born to HBsAg-negative mothers receive HBG vaccine before discharge; second dose at 1-2 mos of age; third dose at 6-18 mos of age.

Services	Frequency or age interval
Patient & parent education and counseling: Dietary assessment and nutrition; Physical activity and exercise; Cancer surveillance; Sexual practices; Substance abuse; Injury prevention; Promoting dental health; Stress and bereavement.	Infants born to HBsAg-positive mothers immunize with HBIG preferably within 12 hrs of birth. Second and third doses at 1 and 6 months of age. Serologic status should be checked at 9 mos and fourth dose administered to infants who are HBsAg-negative with titers of anti-HBs <10 mIU/mL. Re-test one month later for anti-HBs. Up to two additional doses may be considered for those who fail to respond. These are expected components of good clinical practice that are integrated into the office visit at no additional charge.

TRICARE Managed Care Program

Benefits and Beneficiary Payments Under TRICARE Prime Plan

(See Note 1 Below)

I. OUTPATIENT SERVICES

Enrollment fee	TRICARE prime
Applies to all outpatient services	\$0 dependents of E-4 and below. \$35 dependents of E-5 and above. \$50 retirees and others. (double above amounts for family enrollment).

Standard CHAMPUS benefits	Beneficiary cost sharing
<p>Type of Service:</p> <p>Physician Services: Office visits; outpatient office based medical and surgical care; consultation, diagnosis and treatment by a specialist; allergy tests and treatments; osteopathic manipulation; medical supplies used within the office including casts, dressings, and splints</p> <p>Laboratory and X-Ray Services: (No copayment if included in provider's office visit)</p> <p>Ambulance Services: When medically necessary as defined by the CHAMPUS Policy Manual and the service is a covered benefit</p> <p>Ambulatory Surgery (Same Day): Authorized hospital-based or free-standing ambulatory surgical center that is CHAMPUS certified. (not performed in a physician's office)</p> <p>Immunizations: Immunizations required for active duty family members whose sponsors have permanent change of station orders to overseas locations</p> <p>Emergency Services: Emergency and urgently needed care obtained on an outpatient basis, both network and non-network and in and out of service area</p> <p>Durable Medical Equipment, Prosthetic Devices, and Medical Supplies Prescribed by an Authorized Provider Which are Covered Services: If dispensed for use outside of the office or after the home visit</p> <p>Home Health Care: Part-time skilled nursing care, physical, speech & occupational therapy when medically necessary and which are covered benefits</p> <p>Family Health Services: Family planning and well baby care (up to 24 months of age). The exclusions in the CHAMPUS Policy Manual will apply</p> <p>Prescription Drugs</p>	<p>—Dependents of E-4 and below—\$5 copay/visit —Dependents of E-5 and above—\$10 copay/visit. —Retirees and others—\$15 copay/visit.</p> <p>—Dependents of E-4 and below—\$5 copay/visit. —Dependents of E-5 and above—\$10 copay/visit. —Retirees and others—\$10 copay/visit.</p> <p>—Dependents of E-4 and below—\$5 occurrence. —Dependents of E-5 and above—\$10 occurrence. —Retirees and others—\$15 occurrence.</p> <p>—Dependents of E-4 and below—\$15 copay. —Dependents of E-5 and above—\$25 copay. —Retirees and others—\$75 copay.</p> <p>—Dependents of E-4 and below—\$5 copay/visit. —Dependents of E-5 and above—\$10 copay/visit.</p> <p>—Dependents of E-4 and below—\$35/ER visit. —Dependents of E-5 and above—\$50/ER visit. —Retirees and others—\$60/ER visit.</p> <p>—Dependents of E-4 and below—10%. —Dependents of E-5 and above—15% —Retirees and others—20%. (of the negotiated reimbursement rate).</p> <p>—Dependents of E-4 and below—\$5 copay/visit. —Dependents of E-5 and above—\$10 copay/visit. —Retirees and others—\$15 copay/visit.</p> <p>—Dependents of E-4 and below—\$5 copay/visit. —Dependents of E-5 and above—\$10 copay/visit. —Retirees and others—\$15 copay/visit.</p> <p>—Dependents of E-4 and below—\$4/Rx. —Dependents of E-5 and above—\$4/Rx.</p>

Standard CHAMPUS benefits	Beneficiary cost sharing
<p>Outpatient Mental Health: One hour of therapy, no more than two times each week (when medically necessary).</p> <p>Partial Hospitalization for Alcoholism Treatment: Up to 21 days for rehabilitation on a limited hour per day basis. Does not count toward the limits for days of mental health inpatient care.</p>	<p>—Retirees and others—\$8/Rx. (up to 30-day supply).</p> <p>—Dependents of E-4 and below—\$10 copay/visit (for individual visits).</p> <p>—Dependents of E-5 and above—\$20 copay/visit (for individual visits).</p> <p>—Retirees and others—\$25 copay/visit (for individual visits).</p> <p>—Dependents of E-4 and below—\$5 copay/visit (for group visits).</p> <p>—Dependents of E-5 and above—\$10 copay/visit (for group visits).</p> <p>—Retirees and others—\$10 copay/visit (for group visits).</p>

II. INPATIENT SERVICES (SEE NOTE 2)

Standard CHAMPUS by benefits	Beneficiary cost sharing
<p>Type of Service: Hospitalization: Semiprivate room (and when medically necessary, special care units), general nursing, and hospital service. Includes inpatient physician and their surgical services, meals including special diets, drugs and medications while an inpatient, operating and recovery room, anesthesia, laboratory tests, x-rays and other radiology services, necessary medical supplies and appliances, blood and blood products services. Unlimited services with authorization, as medically necessary.</p> <p>Maternity: Hospital and professional services (prenatal, post natal). Unlimited services with authorization, as medically necessary.</p> <p>Skilled Nursing Facility Care: Semiprivate room, regular nursing services, meals including special diets, physical, occupational and speech therapy, drugs furnished by the facility, necessary medical supplies, and appliances. Unlimited services with authorization, as medically necessary.</p> <p>Mental Illness: With authorization, up to 30 days per fiscal year for adults (age 19+), up to 45 days per fiscal year for children under age 19. For Residential Treatment Facilities (RTC) care, up to 150 day limit/year. (See CHAMPUS policy manual for further restrictions)</p> <p>Partial Hospitalization: With authorization, up to 60 days per fiscal year or per admission.</p> <p>Alcoholism: With authorization, 7 days for detoxification and 21 days for rehabilitation per 365 days. Maximum of one rehabilitation program per year and three per lifetime. Detoxification and rehabilitation days count toward limit for mental health benefits.</p>	<p>—Dependents of active duty—\$9.30/day or \$25 (whichever is more).</p> <p>—Retirees and others—\$125 per day or 25% of the hospital's billed charges (whichever is less) with a 10-day cap on inpatient cost sharing per episode, plus 20% of separately billed professional charges.</p> <p>—Dependents of active duty—\$9.30/day or \$25 (whichever is more).</p> <p>—Retirees and others—\$100 per day copay, or 20% cost share of total charges (based on the negotiated rate), whichever is less for institutional services. 15% copay or cost share on professional charges.</p>

Note 1: The beneficiary copayments (i.e., beneficiary payments expressed as a specified amount) in this chart are effective for FY 1993, and will be updated for inflation each fiscal year by the national CPI-U medical index (the medical component of the Urban Consumer Price Index). Beneficiary cost shares (i.e., beneficiary payments as expressed as a percentage of the providers' fees) will not be similarly updated. CHAMPUS annual deductibles under TRICARE Standard will not be similarly updated. The beneficiary is responsible for the full cost of noncovered services and nonemergency services obtained outside the network without prior authorization.

Note 2: The beneficiary cost sharing for inpatient care for active duty dependents will be adjusted periodically to reflect the cost of an inpatient stay in an MTF.

TRICARE Care Program

Benefits and Beneficiary Payments Under TRICARE Extra

I. OUTPATIENT SERVICES

Annual deductible	TRICARE extra
Applies to all outpatient services	Standard CHAMPUS deductibles apply as defined by the CHAMPUS Policy Manual.
Standard CHAMPUS benefits	Beneficiary cost sharing
<p>Type of Service:</p> <p>Physician Services: Office visits; outpatient office based medical and surgical care; consultation, diagnosis and treatment by a specialist; allergy tests and treatments; osteopathic manipulation; medical supplies used within the office including casts, dressings, and splints.</p> <p>Laboratory and X-Ray Services:</p> <p>Ambulance Services: When medically necessary as defined by the CHAMPUS Policy Manual and the service is a covered benefit.</p> <p>Emergency Services: Emergency and urgently needed care obtained on an outpatient basis, both network and non-network and in and out of service area.</p> <p>Routine PAP Smears: Frequency to depend on physician recommendations based on the published guidelines of the American College of Obstetricians and Gynecology.</p> <p>Durable Medical Equipment, Prosthetic Devices, and Medical Supplies Prescribed by an Authorized Provider Which are Covered Services: If dispensed for use outside of the office or after the home visit</p> <p>Home Health Care: Part-time skilled nursing care, physical, speech & occupational therapy when medically necessary and which are covered benefits.</p> <p>Family Health Services: Family planning and well baby care (up to 24 months of age). The exclusions in the CHAMPUS Policy Manual will apply. Prescription Drugs</p> <p>Eye Examinations: One routine examination per year covered for family members of active duty sponsors.</p> <p>Immunizations: Immunizations required for active duty family members whose sponsors have permanent change of station orders to overseas locations.</p> <p>Ambulatory Surgery (Same Day) Authorized hospital-based or free-standing ambulatory surgical center that is CHAMPUS certified. (Not performed in a physician's office).</p> <p>Outpatient Mental Health: One hour of therapy, no more than two times each week (when medically necessary).</p> <p>Partial Hospitalization for Alcoholism Treatment: Up to 21 days for rehabilitation on a limited hour per day basis. Does not count toward the limits for days of mental health inpatient care.</p>	<p>—Dependents of active duty members—15%. —Retirees and others—20% (of the negotiated reimbursement rate).</p> <p>—Dependents of active duty members—15%. —Retirees and others—20% (of the negotiated reimbursement rate).</p> <p>(Deductibles are waived when network pharmacies are used.)</p> <p>—15% of the negotiated reimbursement rate.</p> <p>—Dependents of active duty members—\$25 copay/visit. —Retirees and others—20% of the negotiated rate/visit.</p> <p>—Dependents of active duty members cost share—15% of the negotiated reimbursement rate. —Retirees and others cost share—20% of the negotiated reimbursement rate.</p>

II. INPATIENT SERVICES

Standard CHAMPUS benefits	Beneficiary cost sharing
<p>Type of Service:</p> <p>Hospitalization: Semiprivate room (and when medically necessary, special care units), general nursing, and hospital service. Includes inpatient physician and their surgical services, meals including special diets, drugs and medications while an inpatient, operating and recovery room, anesthesia, laboratory tests, x-rays and other radiology services, necessary medical supplies and appliances, blood and blood products services. Unlimited services with authorization, as medically necessary.</p> <p>Maternity: Hospital and professional services (prenatal, postnatal). Unlimited services with authorization as medically necessary.</p>	<p>—Dependents of active duty—\$9.30/day or \$25 (whichever is more). —Retirees and others—\$200 per day or 25% of the hospital's billed charges (whichever is less) plus 20% cost share of separately billed professional charges (of the negotiated rate). (See Notes 1 and 2).</p>

II. INPATIENT SERVICES—Continued

Standard CHAMPUS benefits	Beneficiary cost sharing
<p>Skilled Nursing Facility Care: Semiprivate room, regular nursing services, meals including special diets, physical, occupational and speech therapy, drugs furnished by the facility, necessary medical supplies, and appliances. Unlimited services with authorization, as medically necessary.</p> <p>Mental Illness: With authorization, up to 30 days per fiscal year for adults (age 19+), up to 45 days per fiscal year for children under age 19. For Residential Treatment Facilities (RTC) care, up to 150 day limit/year. (See CHAMPUS policy manual for further restrictions).</p> <p>Partial Hospitalization: With authorization, up to 60 days per fiscal year or per admission.</p> <p>Alcoholism: With authorization, 7 days for detoxification and 21 days for rehabilitation per 365 days. Maximum of one rehabilitation program per year and three per lifetime. Detoxification and rehabilitation days count toward limit for mental health benefits.</p>	<p>—Dependents of active duty—\$9.30/day or \$25 (whichever is more).</p> <p>—Retirees and others—20% cost share of total charges (based on the negotiated rate), for institutional services, plus 20% cost share on separately billed professional charges (based on the negotiated rate).</p>

Note 1: The beneficiary copayments (i.e., beneficiary payments expressed as a specified amount) in this chart are effective for FY 1993, and will be updated for inflation each fiscal year by the national CPI-U medical index (the medical component of the Urban Consumer Price Index). Beneficiary cost shares (i.e., beneficiary payments as expressed as a percentage of the providers' fees) will not be similarly updated. CHAMPUS annual deductibles under TRICARE Standard will not be similarly updated. The beneficiary is responsible for the full cost of noncovered services and nonemergency services obtained outside the network without prior authorization.

Note 2: The beneficiary cost sharing for inpatient care for active duty dependents will be adjusted periodically to reflect the cost of an inpatient stay in an MTF.

Mental Health and Alcoholism Services

These services and associated cost sharing will continue to be under the current Contract Provider Arrangement (CPA) Norfolk Demonstration Project until the expiration of the contract when the new cost sharing schedule will be implemented. All applicable rules and procedures will continue to apply until superceded by a successor program.

[FR Doc. 93-24504 Filed 10-5-93; 8:45 am]

BILLING CODE 5000-04-M

Ballistic Missile Defense Advisory Committee

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Ballistic Missile Defense (BMD) Advisory Committee will meet in closed session in Washington, DC, on October 19 and 20, 1993.

The mission of the BMD Advisory Committee is to advise the Secretary of Defense and Deputy Secretary of Defense through the USD(A) on all matters relating to ballistic missile defense acquisition, system development, and technology.

In accordance with section 10(d), as amended (5) U.S.C., app II, (1982)), it has been determined that this BMD Advisory Committee meeting concerns matters listed in 5 U.S.C., 552(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: October 1, 1993.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-24505 Filed 10-5-93; 8:45 am]

BILLING CODE 5000-04-M

Department of the Air Force**Intent To Prepare an Environmental Impact Statement for Realignment of McGuire AFB, NJ**

Under the 1993 Defense Base Closure and Realignment Commission recommendations the United States Air Force (Air Force) will prepare an environmental impact statement (EIS) to assess the potential environmental impacts of the realignment to McGuire Air Force Base, New Jersey, 19 KC-10 aircraft, and associated support units. The aircraft (active and reserve) will be realigned from Barksdale AFB, LA.

This EIS will also address the potential impacts of an additional eight KC-10 aircraft, for a total of 27 and associated military construction and facility siting of associated support activities.

To provide a forum for the community to make oral comments, a scoping meeting is scheduled for October 21, 1993 at 7 p.m. in the New Horizon Township Municipal Complex, Hachamich and Main Streets, Cookstown, NJ. Notice of the time and location of the meeting will be made available to public officials, the

community and the local news media. The purpose of this meeting is to identify the environmental issues and concerns that should be analyzed to (1) support the base realignment, (2) solicit comments on the Proposed Action and (3) solicit potential alternatives for consideration in developing the McGuire EIS. The Air Force will consider all reasonable alternatives offered by any Federal, state or local government agency and any federally-sponsored or private entity.

To ensure the Air Force will have sufficient time to consider public comments on environmental issues to be included in the EIS, comments should be forwarded to the address listed below at anytime during the environmental impact analysis process.

Please direct written comments or requests for further information concerning the McGuire AFB Realignment EIS to: Mr. John R. Accornero, HQ AMC/CEVP, 507 A Street, Scott AFB, IL 62225-5022, (618) 256-8332.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93-24546 Filed 10-5-93; 8:45 am]

BILLING CODE 5010-01-W

Department of the Army**Board of Visitors, United States Military Academy**

AGENCY: United States Military Academy, DOD.

ACTION: Notice of open meeting.

In accordance with Section 10(a)(2) of the federal advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 28-30 October 1993.

Place of Meeting: West Point, New York.

Start Time of Meeting: Approximately 2 p.m.

Proposed Agenda: Annual Report Preparation; Report on Summer Activities; visit to Preparatory School; Update reports on Gender Integration; Performance of Graduates; Faculty Transition.

All proceedings are open. For further information contact Lieutenant Colonel Stephen R. Furr, United States Military Academy, West Point, NY 10996-5000. Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93-24466 Filed 10-5-93; 8:45 am]

BILLING CODE 3710-08-M

New Payment System Affecting Invoicing Procedures for All Freight and Personal Property Carriers

AGENCY: Defense Finance and Accounting Service, DOD.

ACTION: Notice.

SUMMARY: 58 FR 42518, subject as above, announced that the Defense Finance and Accounting Service was implementing a new payment system that would affect invoicing procedures for all freight and personal property carriers. The comment "The date of the final rule will be within 60 days following the last day of the comment period" is no longer valid and has therefore been removed. The comment period ended on 9 September 1993.

Comments have been received and revisions incorporated in the Carrier Billing Procedures for freight and personal property carriers. In addition, rules for billing for Guaranteed Traffic shipments have been added. Carriers may obtain copies of the updated billing procedures from the Defense Finance and Accounting Service-Indianapolis Center.

DATES: November 5, 1993.

ADDRESSES: Defense Finance and Accounting Service-Indianapolis Center,

ATTN: DFAS-IN-TA (Mail Stop #5), 8899 East 56th Street, Indianapolis, IN 46249-0606.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Jones, (317) 543-7814. Same address as above.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93-24463 Filed 10-5-93; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers**Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for the Yazoo Basin Reformulation Study, Yazoo Backwater Area**

AGENCY: U.S. Army Corps of Engineers, Vicksburg District, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action includes three authorized projects within the Yazoo Backwater Area: The Yazoo area, the Carter area, and the Rocky Bayou area. The project study area includes Humphreys, Issaquena, Sharkey, Washington, and Yazoo Counties, Mississippi, and Madison Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Gary L. Young, U.S. Army Corps of Engineers, Vicksburg District, CELMK-PD-Q, 2101 North Frontage Road, Vicksburg, Mississippi 39180-5191, (601) 631-5425

SUPPLEMENTARY INFORMATION: 1.

Proposed Action: The proposed action would provide flood damage protection to rural residences and agricultural properties. The SEIS will supplement the Final EIS Yazoo Area Pump Project Yazoo Backwater Area, Mississippi, filed with the Environmental Protection Agency on 7 April 1983. Prior work in the Backwater Area was authorized by the Flood Control Act of 18 August 1941.

2. Alternatives: Alternatives to be evaluated include: No action, nonstructural alternatives, pump station, and levee system. Detailed studies of the authorized projects for the Carter and Rocky Bayou areas are not anticipated at this time.

3. a. A scoping meeting will be held in the project vicinity during November 1993. A public notice will be published to inform the general public of the location, time, and date of the scoping meeting.

b. Significant issues include: Bottomland hardwoods, wetlands, endangered species, waterfowl, fisheries, water quality, cultural resources, socioeconomic conditions, etc.

Additional alternatives, environmental issues, and consultation requirements may be identified during the scoping process.

c. The Environmental Protection Agency; U.S. Fish and Wildlife Service; Soil Conservation Service; Mississippi Department of Environmental Quality; Mississippi Department of Wildlife, Fisheries and Parks; and U.S. Forest Service will be invited to participate as cooperating agencies.

4. A Reformulation Study Report, including the SEIS, will be available for review by the general public in 1997.

Gregory D. Showalter,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 93-24465 Filed 10-5-93; 8:45 am]

BILLING CODE 3710-GX-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. QF91-138-001]

LG&E-Westmoreland Rensselaer; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

September 30, 1993.

On September 22, 1993, LG&E-Westmoreland Rensselaer (Applicant), c/o LG&E Power Inc., 12500 Fair Lakes Circle, Suite 260, Fairfax, Virginia 22033-3822, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility is located in Rensselaer, New York. The facility consists of a combination turbine generator, a supplementary fired heat recovery boiler and an extraction/condensing steam turbine generator. Steam generated by the facility is used by BASF Corporation for the manufacture of specialty chemicals and for space heating. The primary energy source is natural gas. The maximum net electric power production capacity of the facility is 79 MW.

The certification of the facility was originally issued to Hadson Power Partners of Rensselaer on September 18, 1991, [56 FERC ¶ 62,192 (1991)]. The instant recertification is requested by the Applicant to reflect an ownership change. All other facility characteristics remain unchanged as described in the previous certification.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the Federal Register and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24481 Filed 10-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-15007T Texas-150]

State of Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

September 30, 1993.

Take notice that on September 27, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Wilcox Formation, Wilcox 12,300 San Interval, Falcon Lake E Field, underlying a portion of Zapata County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 4 and consists of portions of the following surveys:

A.J. Nolen Survey, Abstract 534, Section 616
A.J. Nolen Survey, Abstract 536, Section 188
J. Santo Gutierrez, Abstract 32, Section 20

The notice of determination also contains Texas' findings that the referenced portion of the Wilcox Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and

275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24480 Filed 10-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-103-000]

Moraine Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 30, 1993.

Take notice that on September 24, 1993, Moraine Pipeline Company (Moraine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifth Revised Sheet No. 4, to be effective October 1, 1993.

Moraine states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Moraine to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1993 is .26¢ per Mcf. Under Moraine's billing basis of 14.73 psia at 1,000 Btu, this rate converts to .26¢ per Mcf.

Moraine states that it delayed filing its ACA revision pending Commission action on its Request for Waiver of Payment of Annual Charges filed August 10, 1993 at Docket No. RM87-3. The Commission has not yet acted on Moraine's waiver request. Moraine states that its filing is without prejudice to its waiver request referencing Docket No. CP93-351-000. Moraine further states that it will be going out of existence, now scheduled for December 1, 1993.

Moraine states that a copy of the filing is being mailed to Moraine's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 7, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24483 Filed 10-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-732-000]

Murphy Exploration & Production Co.; Petition for Declaratory Order

September 30, 1993:

Take notice that on September 21, 1993, Murphy Exploration & Production Company (Murphy), 200 Peach Street, P.O. Box 7000, El Dorado, Arkansas 71731-7000, filed in Docket No. CP93-732-000 a petition pursuant to section 16 of the Natural Gas Act (NGA) and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2)), for a declaratory order disclaiming Commission jurisdiction over certain facilities and the services provided through them, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Murphy seeks a declaratory order from the Commission finding that facilities to be acquired from Texas Eastern Transmission Corporation (Texas Eastern) would be facilities used for the gathering of natural gas and thereby exempt from Commission jurisdiction pursuant to Section 1(b) of the NGA. Murphy indicates that the facilities are the subject of Texas Eastern's abandonment application filed in Docket No. CP93-733-000.

Murphy describes the facilities as Texas Eastern's Line Nos. 59 and 59-A, which are 12-inch laterals, and include the associated metering facilities. It is stated that Line 59 is 23,232 feet in length and connects Murphy's oil and gas production platform in Ship Shoal Block 134 to the transmission facilities of Tennessee Gas Pipeline Company (Tennessee) in Ship Shoal Block 120, offshore Louisiana. It is further stated that Line 59-A connects Murphy's oil and gas platform in Ship Shoal Block 135 to Line 59, and is 1,584 feet in length.

Murphy states that it would operate the facilities as non-jurisdictional gathering facilities. Murphy submits that the facilities would be non-jurisdictional for the following reasons, *inter alia*.

- Murphy is engaged in the domestic and international exploration and production of oil and gas.
- Both lines are located in the center of active producing fields and connect directly to producing wells.

- Both lines carry non-dehydrated gas and are located upstream of any processing facilities. Line 59-A is located upstream of any compression facilities.

- The sole purpose of the facilities, once abandoned and transferred to Murphy, would be to gather gas produced and owned by Murphy for delivery to Tennessee's transmission facilities.

Murphy further states that it is the sole working interest owner in the wells from which the facilities gather gas; there is no production owned by third-party shippers along or within approximately 3.5 miles of the facilities; and, therefore, there are no shippers on the facilities other than Murphy.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 21, 1993, file with the Federal Energy Regulatory Commission, 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 384.214 or 385.211) 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 a 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24477 Filed 10-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-172-001]

Panhandle Eastern Pipe Line Company; Proposed Changes in FERC Gas Tariff

September 30, 1993.

Take notice that on September 27, 1993, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Original Tariff Sheet No. 24 which is proposed to become effective September 23, 1993.

Panhandle states that this filing is being made in compliance with ordering paragraph (C) of the Commission's September 22, 1993 Order Accepting and Suspending Tariff Sheets Subject To Refund And Conditions And Establishing A Technical Conference in the above referenced docket.

Panhandle states that copies of the filing has been served on all customers affected by this filing, their respective state commission 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 § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 7, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24482 Filed 10-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-733-000]

Texas Eastern Transmission Corporation; Application

September 30, 1993.

Take notice that on September 21, 1993, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP93-733-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon two 12-inch natural gas pipeline laterals, and associated metering facilities, which were authorized under its blanket certificate issued in Docket No. CP82-535-000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Eastern proposes to abandon by sale to Murphy Exploration & Production Company (Murphy) Line Nos. 59 and 59-A, which were constructed in 1984.¹ It is stated that Line 59 is 4.4 miles in length and was constructed to connect gas reserves from the Ship Shoal Block 134 area to a pipeline in Ship Shoal Block 120, offshore Louisiana, owned by Tennessee Gas Pipeline Company. Also, it is stated that Line 59-A is 0.3 miles in length and gathers gas reserves produced in Ship Shoal Blocks 135, 136, and 120 to

¹ Murphy has filed a related petition in Docket No. CP93-732-000 for a declaratory order disclaiming jurisdiction over the facilities to be acquired from Texas Eastern.

a point in Ship Shoal Block 135, where it connects to Line 59.

Texas Eastern states that the facilities were used to transport natural gas which it purchased from Odeco Oil and Gas Company (Odeco),² under an October 6, 1983, gas purchase agreement. Texas Eastern states that the purchase agreement dedicated to Texas Eastern the natural gas reserves located at or near Ship Shoal Blocks 134, 135, 136, and 120. Texas Eastern further states that the purchase agreement has been terminated and, subsequently, interruptible transportation service has been provided for Murphy under its Rate Schedule IT-1. Texas Eastern submits that the transfer of facilities to Murphy would give Murphy a least cost alternative to installing new offshore facilities and would relieve it of ongoing operation and maintenance expenses. Texas Eastern states that none of its customers would be adversely affected by the proposal.

Texas Eastern indicates that the facilities would be sold for \$1 million as compared to an original cost of \$3.6 million.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 21, 1993, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211) 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 a 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 the 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 application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to

² Odeco has since merged with and changed its name to Murphy.

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 Texas Eastern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24479 Filed 10-5-93; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4783-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before November 5, 1993.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Trade Secret Clearance Justification for Pesticides. (EPA ICR No: 0613.05; OMB No: 2070-0053) This is a request for extension of the expiration date of a currently approved collection.

Abstract: The Freedom of Information Act (FOIA) provides for release to the public of health and safety data on chemical pesticides, unless such products are exempt from being disclosed under section 10(d) (1)(A), (B), or (C) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

Upon receipt of a FOIA request by the public for health and safety data on a pesticide, EPA sends to the owner of the chemical product (the respondent) a copy of the data request, a cover letter, a set of instructions for responding and a nine part questionnaire. The respondent reviews the health and

safety data on the pesticide to determine whether to authorize the release to the public of the requested data, or to provide evidence to the EPA substantiating the claim(s) of confidentiality for the requested material. Claims of confidentiality must be supported by submitting to the Agency the completed nine-part questionnaire. The questionnaire asks for specific information on quality control processes, method of testing a pesticide product, what information should be tagged confidential, and why and for how long; it also asks questions regarding any protection undertaken by the respondent to guard against unwanted disclosure and previous assertion(s) of confidentiality made to EPA and other Federal agencies or courts.

The EPA needs this information to determine whether health and safety data on chemical pesticides should remain confidential or be made public.

Burden Statement: The estimated annual reporting burden for this collection of information is estimated to average 21 hours per respondent. This estimate includes the time needed to review instructions, complete the questionnaire, submit the necessary information for confidential claim and review the collection of information.

Respondents: Pesticide owners of FOIA requested data.

Estimated Number of Respondents: 90.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,890 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: September 30, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93-24536 Filed 10-5-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-00366; FRL-4648-4]

Disclosure of Names of Pesticide Product Inert Ingredients; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a revised list of pesticide product inert ingredients and their Chemical Abstract Service (CAS) numbers. This list updates the list announced in the Federal Register on January 15, 1992 (57 FR 1732).

ADDRESSES: A copy of the list may be obtained in person at Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA., or by calling the EPA Office of Pesticide Programs Public Docket at (703) 305-5805, or by writing to: OPP Public Docket (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Acting Chief, Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA., (703-305-5805).

List of Subjects

Environmental protection.

Dated: September 23, 1993.

Allan S. Abramson,

Acting Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 93-24433 Filed 10-5-93; 8:45 am]

BILLING CODE 6560-50-F

[IL-64-2-5807; FRL-4786-2]

Availability of Draft Student Handbook and Statement of Intent To Develop Training and Certification Programs for Operators of High Capacity Fossil Fuel-Fired Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft student handbook and of EPA's intent to develop training and certification programs for operators of high capacity fossil fuel-fired plants as required under section 129 of the Clean Air Act (Act).

SUMMARY: This action announces the availability of a draft student handbook prepared as part of a training program

for operators of high capacity fossil fuel-fired plants and the intent of the EPA to also develop a model State certification program for these operators, as required under section 129 of the Act.

The purpose of this action is to request public comment on the draft student handbook and on the EPA's intent to develop the training and certification programs.

DATES: Comments. Comments must be received on or before December 6, 1993.

ADDRESSES: Written comments should be addressed to: Emission Standards Division, U.S. Environmental Protection Agency, MD-13, Research Triangle Park, North Carolina 27711, Attention: Mr. James Eddinger.

A copy of the draft student handbook may be obtained by contacting Mr. James Eddinger, Industrial Studies Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5426.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this notice, contact Mr. James Eddinger, Industrial Studies Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5426.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this notice.

- I. Introduction
- II. Model Training and Certification Programs
- III. Additional Certification Programs

I. Introduction

Section 129(d) of the Act requires the EPA to develop and promote a model State program for the training and certification of solid waste incineration unit operators and high-capacity fossil fuel-fired plant operators. In August 1993, the EPA submitted to all State air pollution control agencies the model State training programs that the EPA developed for operators of municipal waste combustors (MWC's) and medical waste incinerators (MWI's) pursuant to this requirement.

The EPA has made training an integral part of the operating practice standards promulgated for MWC's under section 129 of the Act. On February 11, 1991, the EPA promulgated these standards for MWC's with unit capacities greater than 225 Megagrams per day (250 tons per day) (56 FR 5488). The standards also require certification of the chief facility operator and the shift supervisors by the American Society of Mechanical Engineers

(ASME) or an equivalent State-approved certification program. The model State training program for MWC's was developed to provide a level of understanding which is adequate to successfully complete the requirements of the ASME standard for certification of operators of such facilities.

The EPA is also working with the ASME in developing a certification program for MWI operators. This ASME certification program is nearly complete. The EPA will likely make training an integral part of the proposed operating standards for MWI's when they are published in the future. The proposed MWI standards would also likely require certification of the operator and the operator's supervisor by the ASME or an equivalent State-approved certification program. The model state training program developed by the EPA for MWI's is also intended to provide a level of understanding which is adequate to successfully complete the requirements of the upcoming ASME standard for certification of operators of MWI facilities.

This notice addresses the EPA's plans regarding development of a model State program for the training and certification of high capacity fossil fuel-fired plant operators pursuant to section 129(d) of the Act. The EPA intends to investigate options for encouraging the States to implement training and certification requirements for these operators.

II. Model Training and Certification Programs

In October 1992, the EPA initiated development of a training program for operators of high capacity fossil fuel-fired plants. The EPA considers the term high-capacity fossil fuel-fired plants to mean boilers (i.e., devices that combust fossil fuel to produce steam or hot water) with capacities greater than 10 million BTU's per hour heat input. The training course is designed so that it will fulfill requirements leading to boiler operator certification. The group of high capacity fossil fuel-fired plants (boilers) covered in this training course are those defined under 40 CFR 60, subparts Da (Electric Utility Steam Generating Units), Db (Industrial, Commercial, and Institutional Steam Generating Units), and Dc (Small Industrial, Commercial, and Institutional Steam Generating Units). This group of boilers covers the size range from 10 million BTU's per hour heat input to the largest utility boilers.

The training program being developed for boiler operators is intended to provide the operator with a basic understanding of the principles of fuel

combustion and air pollution control and to identify, in a general sense, good operating practices. The program is intended as a supplement to, rather than a substitute for, site-specific "hands-on" training of the operator. The objectives of the training program are: To instruct operators in the basic principles of proper operation and maintenance of boilers and air pollution control systems; to give the operators an appreciation for their role in minimizing air pollution; and to increase the operators' awareness of regulatory requirements.

The development program for the training course emphasized the gathering of available operating information for all types of boilers, both existing and new, and for all types of control equipment in reducing air emissions from boilers. The objective is to document for each type of boiler and control equipment the significant operating parameters that directly influence air emissions and how control of these operating parameters may be used as an emission control technique.

The training program will consist of a student handbook which is not only intended for use during the course but also as a reference for operators after completion of the course, and an instructor guide which will provide the basic materials for use by the instructor of the training course. The instructor guide will include the course description and agenda, course goals, lesson plans, copies of an initial test and a final examination, and audio-visual aids.

The draft student handbook, available for review and comment, consists of the following chapters:

1. Introduction;
2. Water and Steam Circuit;
3. Fuel, Air and Gas Circuit;
4. Fossil Fuels;
5. Combustion Principles;
6. Air Pollution Fundamentals;
7. Natural Gas Fired Boilers;
8. Oil Fired Boilers;
9. Pulverized Coal Fired Boilers;
10. Stoker Fired Boilers;
11. Fluidized Bed Boilers;
12. Gas Turbine/HRSG Combined Cycle;
13. Package Boilers;
14. Normal Operation;
15. Automatic Control Systems;
16. Instrumentation;
17. Electrical Theory;
18. Turbine Generator;
19. Preventative Maintenance;
20. Safety;
21. Air Pollutants of Concern;
22. Environmental Regulations;
23. Continuous Emissions Monitoring;
24. Particulate Control;

25. NOx Control;
26. SOx Control;
27. Water Pollution and Control;
28. Solid Wastes;
29. Solid Waste Control; and
30. Glossary.

Future activities for developing this training course include revision of the student handbook based on comments received from this action, development of the instructor guide, a test offering of the course, revision of the training materials based on the test course, and publication of a final student handbook and instructor guide. The schedule for completing the final documents is September 30, 1994.

It is the EPA's intention to develop a model State certification program for high capacity fossil fuel-fired plants which will outline the scope of requirements and components that a State agency should consider and include in developing or approving a certification program for boiler operators. Examples of components that will be considered for inclusion in this model certification program are: the levels of operators to be certified, requirements for on-the-job experience, levels of certifications, and provisions for a "bank" of questions to implement written examinations. The schedule for completing this model State certification program is September 30, 1994.

The operator training materials that will be completed by September 30, 1994 include testing materials that indicate a student's satisfactory completion of the training course. The EPA will provide the final student and instructor manuals to the States so they can use them immediately to initiate implementation of operator training and to serve as a partial basis for developing and implementing a certification program for high capacity fossil fuel-fired plant operators.

III. Additional Certification Programs

In August 1992, to ensure the availability of at least one appropriate national certification program, the EPA requested the ASME to develop and manage a nationwide certification program for boiler operators. As a result, the ASME Board of Safety Codes & Standards and the Council on Codes & Standards approved the formation of an Ad Hoc Committee in November 1992. The purpose of this committee is to develop a proposed scope, committee organization, and committee procedures for the development of the standard and certification. The ASME certification program is anticipated to be completed in late 1996.

As discussed above, the EPA will provide the final student and instructor manuals and a model State certification program to the States by September 30, 1994 so they can implement operator training or certification programs prior to finalization of the ASME certification program. The training materials discussed above will be amended if necessary when the ASME certification program is sufficiently developed, to ensure that where appropriate, the training course is coordinated with the ASME certification requirements.

The ASME has previously developed certification programs for operators of MWC's and MWI's. The EPA is directly involved now in the development of the MWI operator certification program by serving on the developmental committee and providing technical assistance. In terms of the boiler operator certification program, the EPA's intention is to work in a similar manner with the ASME in its development by again serving on the various developmental committees and by providing technical assistance.

Dated: September 30, 1993.

Robert Brenner,
Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93-24537 Filed 10-5-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1000-DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA-1000-DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

Crawford and Cherokee Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-24539 Filed 10-5-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1000-DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA-1000-DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is reopened and amended to be June 28, 1993, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-24540 Filed 10-5-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-993-DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA-993-DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: September 28, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota dated June 11, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 11, 1993:

Dodge, Fillmore, Kandiyohi, and Pope for Individual Assistance and Public Assistance. (Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-24541 Filed 10-5-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-995-DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA-995-DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: September 28, 1993.

FOR FURTHER INFORMATION CONTACT:

Pauline C. Campbell, Disaster Assistance Program, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated July 9, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Greene County for Individual Assistance. (Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-24542 Filed 10-5-93; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Centura Banks, 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 October 29, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Centura Bank, Inc.*, Rocky Mount, North Carolina; to merge with First Charlotte Financial Corporation; Charlotte, North Carolina, and thereby indirectly acquire First Charlotte Bank and Trust Company, Charlotte, North Carolina.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Colonial Bankshares Corporation*, Chicago, Illinois; to acquire 100 percent of the voting shares of GNP Bancorp, Inc., Mundelein, Illinois, and thereby indirectly acquire New Century Bank, Mundelein, Illinois.

2. *First Colonial Bankshares Corporation*, Chicago, Illinois; to acquire 100 percent of the voting shares of Hi-Bancorp, Inc., Highwood, Illinois, and thereby indirectly acquire Bank of Highwood, Highwood, Illinois.

3. *NEB Corporation*, Fond du Lac, Wisconsin; to acquire 100 percent of the voting shares of Cascade Bancorporation, Inc., Venice, Florida, and thereby indirectly acquire State Bank of Cascade, Cascade, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Banterra Corp.*, Eldorado, Illinois; to acquire up to 24.99 percent of the voting shares of First of Murphysboro Corp., Murphysboro, Illinois, and thereby indirectly acquire First Bank & Trust Company of Murphysboro, Murphysboro, Illinois.

Board of Governors of the Federal Reserve System, September 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24509 Filed 10-5-93; 8:45 am]

BILLING CODE 6210-01-F

City Holding Company; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has 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. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 25, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *City Holding Company*, Charleston, West Virginia; to engage *de novo* through its subsidiary, City Financial Corporation, Charleston, West Virginia, in securities brokerage and investment advisory services on a combined basis pursuant to §§ 225.25(b)(4)(i), (ii), (iii), (iv), (v), (vi), and 225.25(b)(15)(i) and (ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24508 Filed 10-5-93; 8:45 am]

BILLING CODE 6210-01-F

Crestar Financial Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 29, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Crestar Financial Corporation*, Richmond, Virginia; to acquire Providence Savings and Loan

Association, F.A., Vienna, Virginia, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Sterling Bancorp, Inc.*, Sterling, Illinois; to acquire 46 percent of the voting shares of D.D. Development of Sterling Limited Partnership, Sterling, Illinois, and thereby engage in providing housing to low income and developmentally disabled residents pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Whiteside County, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *National City Bancshares, Inc.*, Evansville, Indiana; through the proposed acquisition of Lincolnland Bancorp, Inc., Dale, Indiana, to acquire Ayer-Wagoner-Deal Insurance Agency, Inc., Rockport, Indiana, which operates as an insurance agency, offering life, casualty, property, homeowners, business, disability, and automobile insurance through several insurance companies or underwriters, in a place where the bank holding company or a subsidiary of the bank holding company has a lending office that has a population of less than 5,000 persons, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24510 Filed 10-5-93; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a

company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the 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 each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; and *GST Co.*, Minneapolis, Minnesota; have applied to acquire First United Bank Group, Inc., Albuquerque, New Mexico, and thereby indirectly acquire Ford Bank Group, Inc., Lubbock, Texas; Fort Bank Group Holdings, Inc., Lubbock, Texas; First National Bank, Borger, Texas; First National Bank in Canyon, Canyon, Texas; First National Bank of Central Texas, Waco, Texas; First National Bank of Plainview, Plainview, Texas; First National Bank of Post, Post, Texas; First National Bank of West Texas, Lubbock, Texas; First State Bank, Crane, Texas; Yoakum State Bank, Denver City, Texas; United New Mexico Financial Corporation, Albuquerque, New Mexico; United New Mexico Bank, Vaughn, New Mexico; United New Mexico Bank, N.A., Socorro, New Mexico; United New Mexico Bank, Deming, New Mexico; United New

Mexico Bank, Hobbs, New Mexico; United New Mexico Bank, Alamogordo, New Mexico; United New Mexico Bank, Carlsbad, New Mexico; United New Mexico Bank, Albuquerque, New Mexico; United New Mexico Bank, Gallup, New Mexico; United New Mexico Bank, Roswell, New Mexico; United New Mexico Bank, N.A., Las Cruces, New Mexico; and United New Mexico Bank, N.A., Portales, New Mexico. In connection with this application, GST has applied to become a bank holding company by merging with First United Bank Group, Inc., Albuquerque, New Mexico.

In connection with this application, Norwest Corporation has applied to acquire, through its subsidiary, Norwest Investment Services, Inc., Des Moines, Iowa, the discount brokerage business, other investment services business and safekeeping business of First United Bank Group, Inc., Albuquerque, New Mexico, and thereby engage in the discount brokerage business, including full-service brokerage, government securities, limited underwriting activities, and the sale of fixed and variable annuities pursuant to § 225.25(b)(15); and to acquire, through its subsidiary, Norwest Mortgage, Inc., the mortgage servicing and production business of the bank subsidiaries of First United Bank Group, Inc., Albuquerque, New Mexico, and thereby engage in residential mortgage lending activities, including loan origination and servicing pursuant to § 225.25(b)(1) of the Board's Regulation Y. In addition, Norwest Corporation and GST Co. have applied to acquire United New Mexico Credit Life Insurance Company, Phoenix, Arizona, and thereby engage in underwriting, as reinsurer, of credit life and credit accident and health insurance written in connection with extensions of credit by the bank holding company's subsidiary banks pursuant to § 225.25(b)(8)(i); and United New Mexico Trust Company, Albuquerque, New Mexico, and thereby engage in performing functions or activities that may be performed by a trust company pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24511 Filed 10-5-93; 8:45 am]

BILLING CODE 6210-01-F

S. Robson Walton, 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 October 25, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. S. Robson Walton, to acquire an additional 2.0 percent for a total of 26.90 percent; John T. Walton, to acquire 2.0 percent for a total of 26.90 percent; and Jim C. Walton, to acquire 2.0 percent for a total of 26.90 percent of the voting shares of Arvest Bank Group, Inc., Bentonville, Arkansas.

Board of Governors of the Federal Reserve System, September 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24512 Filed 10-5-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N-0191]

Kanubhai C. Desai; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under section 306(a)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335(a)(2)) permanently debarbing Dr. Kanubhai C. Desai, 730 Mill St. #F-3, Belleville, NJ 17109, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a

finding that Dr. Desai was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Dr. Desai has failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

EFFECTIVE DATE: October 6, 1993.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Tamar S. Nordenberg, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-2041.

SUPPLEMENTARY INFORMATION:

I. Background

Dr. Kanubhai C. Desai, the former Director of Par Pharmaceutical, Inc.'s (Par) Quality Control Laboratory, was convicted and sentenced on March 19, 1993, for one count of obstruction of an agency proceeding, a Federal felony offense under 18 U.S.C. 1505. The basis for this conviction was the finding that, in order to prevent FDA officials from discovering the failing results of chemical tests, Dr. Desai unlawfully destroyed records which the officials were authorized to inspect.

In a certified letter received by Dr. Desai on June 23, 1993, FDA offered Dr. Desai an opportunity for a hearing on the agency's proposal to issue an order under section 306(a) of the act debarring Dr. Desai from providing services in any capacity to a person that has an approved or pending drug product application. FDA based the proposal to debar on its finding that Dr. Desai was convicted of a felony under Federal law for conduct relating to the regulation of Par's drug products. Dr. Desai did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Dr. Kanubhai C. Desai has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product (21 U.S.C. 335a(a) (2) (B)).

As a result of the foregoing findings, Dr. Kanubhai C. Desai is permanently debarred from providing services in any capacity to a person with an approved

or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (insert date of publication in the Federal Register) (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Desai in any capacity, during his period of debarment, will be subject to civil money penalties. If Dr. Desai, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated human drug application from Dr. Desai during his period of debarment.

Any application by Dr. Desai for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 93N-0191 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 21, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93-24471 Filed 10-5-93; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration [HSQ-209-N]

Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Exemption of Laboratories Licensed by the State of Washington

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: Section 353(p) of the Public Health Service Act provides for the exemption of laboratories from the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) when the State in which they are located has requirements equal to or more stringent than CLIA's. This notice grants exemption from CLIA requirements to laboratories located within the State of Washington that possess a valid license under the

Medical Test Site Licensure Law, Chapter 70.40 of the Revised Code of Washington (RCW). The background and legislative authority, the requirements for granting CLIA exemption, the evaluation of the State's request for exemption, information about validation inspections, the required administrative actions, and the term of approval are set forth in this notice.

EFFECTIVE DATE: The provisions of this notice are effective October 6, 1993 until October 6, 1994.

FOR FURTHER INFORMATION CONTACT: Val Coppola, (410) 597-5892.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

Section 353 of the Public Health Service Act (PHS Act), as amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA), requires any laboratory that performs tests on human specimens to meet requirements established by the Department of Health and Human Services (HHS). Under the provisions of the sentence following section 1861(s)(14) and paragraph 1861(s)(16) of the Social Security Act any laboratory that also wants to be paid for services furnished to Medicare beneficiaries must meet the requirements of section 353 of the PHS Act. Subject to specified exceptions, laboratories must have a current and valid CLIA certificate to test human specimens and to be eligible for payment from the Medicare or Medicaid program. Regulations implementing section 353 of the PHS Act are contained in 42 CFR part 493.

Section 353(p) of the PHS Act provides for the exemption of laboratories from CLIA requirements in a State that applies requirements that are equal to or more stringent than those of CLIA. The statute does not specifically require the promulgation of criteria for the exemption of laboratories in a State. The decision to grant CLIA exemption to laboratories within a State is at the discretion of HCFA, acting on behalf of the Secretary of HHS.

42 CFR part 493 subpart E implements section 353(p) of the PHS Act. Section 493.513 provides that HCFA may exempt from CLIA requirements, for a period not to exceed six years, all State licensed or approved laboratories in a State if the State meets specified conditions. Section 493.513(k) provides that we will publish a notice in the Federal Register announcing the names of States whose laboratories are exempt from meeting the requirements of part 493.

II. Requirements for Granting CLIA Exemption

In order to determine whether HCFA should grant CLIA exemption to laboratories within a State, we conduct a detailed and in-depth comparison of State and CLIA requirements. We evaluate whether the State meets the requirements at § 493.513. In summary, the State must:

- Have laws in effect that provide for requirements that are equal to or more stringent than CLIA requirements;
 - Have an agency that licenses or approves laboratories that meet State requirements that meet or exceed CLIA requirements, and would, therefore, meet the condition level requirements of the CLIA regulations;
 - Meet the requirements and be approved in accordance with § 493.515, Federal review of laboratory requirements of State laboratory programs;
 - Demonstrate that it has enforcement authority and administrative structures and resources adequate to enforce its laboratory requirements;
 - Permit HCFA or HCFA agents to inspect laboratories within the State;
 - Require laboratories within the State to submit to inspections by HCFA or HCFA agents as a condition of licensure;
 - Agree to pay the cost of the validation program administered by HCFA and the cost of the State's pro rata share of the general overhead to develop and implement CLIA as specified in §§ 493.645(b) and 493.646; and
 - Take appropriate enforcement action against laboratories found by HCFA or HCFA agents not to be in compliance with requirements comparable to condition level requirements.
- As specified in our regulations at 42 CFR 493.515, our review of a State laboratory program includes (but is not necessarily limited to) an evaluation of:
- Whether the State's requirements for laboratories are equivalent to or more stringent than the condition level requirements;
 - The State's inspection process requirements to determine:
 - + The comparability of the full inspection and complaint inspection procedures to those of HCFA;
 - + The State's enforcement procedures for laboratories found to be out of compliance with its requirements; and
 - + The ability of the State to provide HCFA with electronic data and reports with the adverse or corrective actions resulting from proficiency testing (PT) results that constitute unsuccessful participation in HHS-approved PT

programs and with other data HCFA determines to be necessary for validation and assessment of the State's inspection process requirements;

- The State's agreement with HCFA to:
 - + Notify HCFA within 30 days of the action taken against any CLIA-exempt laboratory that has had its licensure or approval withdrawn or revoked or been in any way sanctioned;
 - + Notify HCFA within 10 days of any deficiency identified in a CLIA-exempt laboratory in cases when the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public;
 - + Notify each laboratory licensed by the State within 10 days of HCFA's withdrawal of the exemption;
 - + Provide HCFA with written notification of any changes in its licensure (or approval) and inspection requirements;
 - + Disclose any laboratory's PT results in accordance with a State's confidentiality requirements;
 - + Take the appropriate enforcement action against laboratories found by HCFA not to be in compliance with requirements comparable to condition level requirements and report these enforcement actions to HCFA;
 - + Notify HCFA of all newly licensed laboratories, including the specialties and subspecialties, for which any laboratory performs testing, within 30 days; and
 - + Provide HCFA, as requested, inspection schedules for validation purposes.

III. Evaluation of the Washington State Request for CLIA Exemption

The State of Washington has applied to HCFA for exemption of its laboratories from CLIA requirements.

We have evaluated the Washington State CLIA exemption application and all subsequent submissions for equivalency against the three major categories of CLIA rules: the implementing regulations, the enforcement regulations, and the deeming/exemption requirements.

We evaluated the Washington State application to verify the State's assurance of compliance with the following subparts of part 493.

Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under An Approved State Laboratory Program

The HCFA and the Centers for Disease Control and Prevention (CDC) reviewers have examined the Washington State application and all subsequent

submissions against the exemption requirements a State must meet in order to be granted CLIA exempt status (§ 493.513, and the applicable parts of §§ 493.515, 493.517, 493.519, and 493.521). The State has complied with the applicable CLIA requirements for exemption under this subpart.

Subpart H—Participation in Proficiency Testing for Laboratories Performing Tests of Moderate or High Complexity, or Both

The regulations of Washington State for PT are currently more stringent than those of CLIA, as all laboratories are required to participate in PT for tests not waived. However, CLIA requirements will become more stringent. Currently, CLIA allows a phase-in for certain PT requirements (§ 493.801) and will impose no sanctions for the first year. The Washington Administrative Code (WAC) or implementing regulations will be the same as CLIA PT requirements as of January 1, 1994, the effective date of the CLIA PT requirements.

We also reviewed, in depth, the provisions of the WAC relating to cytology. We found Washington's requirements, which were revised to meet CLIA's, to be essentially equal to our regulations. The cytology workload limits specified by Washington State are identical to those in the CLIA regulations.

Subpart J—Patient Test Management for Moderate or High Complexity Testing, or Both

The applicable standards of the WAC have been revised to equal the CLIA requirements at § 493.1101 through § 493.1111 concerning patient test management.

Subpart K—Quality Control for Tests of Moderate or High Complexity, or Both

Currently, the WAC requirements on quality control for tests of moderate or high complexity are more stringent than CLIA requirements as all testing that is not waived must meet all quality control (QC) requirements. However, under § 493.1202(c), CLIA requirements allow a phase-in of QC requirements for specified moderately complex tests until September 1, 1994. The applicable WAC requirements have been revised to adopt the CLIA QC requirements on September 1, 1994, and will then be equal to CLIA QC requirements.

Washington State has maintained some variations from CLIA in the State's interpretive guidelines, rather than in its

WAC. When taken as a whole, we found the directions to inspectors in guidelines that interpret three elements of the Federal regulations to be equivalent to those established by HCFA and CDC, taken as a whole. These variations allow licensed laboratories in Washington to have additional options through which they may meet equivalent requirements of the State.

- A licensed laboratory in Washington State may also attain compliance with the State's requirement that is equivalent to that found in § 493.1205(e)(1) when it receives and retains documentation from the manufacturer that expiration dates for reagents, solutions, culture media, control materials, calibration materials and other supplies have been extended to a longer specified date in a specific lot number.

- The requirement to perform calibration verification in the WAC is equivalent to the CLIA requirements under § 493.1217. The State's interpretative guidelines indicate that the assayed material acceptable for use in verification of calibration could include previous lot numbers of calibrators run as unknowns or standards that are appropriate for the instrument as stipulated by the instrument vendor. The guidelines also list examples of alternative methods that a laboratory may use to comply with the calibration verification requirement when assayed materials are not available.

- The requirement in the WAC that corresponds to § 493.1227(a)(1) may be met by laboratories using coagulase, catalase, beta-lactamase and oxidase reagents as follows: If the manufacturer does not state a frequency for QC, the laboratory must perform QC daily. If the laboratory has documentation that no problems have been detected with QC of these reagents over a six-month period or longer, depending upon the number of tests performed or number of lot numbers used, weekly QC for catalase, coagulase, beta-lactamase and oxidase reagents may be accepted. If the laboratory has frozen aliquots of reagents for testing, each new vial should be checked before it is put into use. Also, weekly QC for direct antigen systems may be accepted if the laboratory has documentation that no problems have been detected with QC of the system over a six-month or longer period of performing daily QC, depending on the number of tests performed or number of lot numbers used. However, if the manufacturer's instructions say that QC should be done daily, the laboratory must adhere to the manufacturer's instructions.

Overall and taken as a whole, Washington State QC requirements are equivalent to CLIA requirements.

Subpart M—Personnel for Moderate and High Complexity Testing

The WAC has been revised to adopt CLIA standards for personnel qualifications and responsibilities of CLIA to include the phase-in provisions of CLIA personnel qualifications.

Subpart P—Quality Assurance for Moderate or High Complexity Testing, or Both

The applicable standards of the WAC have been revised to equal the CLIA requirements at §§ 493.1701 through 493.1721 concerning quality assurance.

Subpart Q—Inspection

Washington State has also revised the applicable standards of the WAC to equate to CLIA requirements at §§ 493.1775 through 493.1780 concerning inspection of laboratories.

Subpart R—Enforcement Procedures

HCFA and CDC reviewed documentation of the State's enforcement authority, its administrative structure and the resources used to enforce its standards for completeness.

The State appropriately applies limitations and revocations of its licenses for laboratories as well as intermediate sanctions such as on-site monitoring of laboratories and imposition of civil money penalties.

The State has provided HCFA with the mechanism it currently uses to monitor the PT performance of its laboratories and has formally requested access to the HCFA PT data system at the State's expense to continue PT monitoring electronically. Washington State has indicated the actions it takes for unsuccessful PT participation, which equal CLIA enforcement policy. The State has provided appropriate documentation demonstrating that its enforcement policies and procedures are equivalent to those of CLIA.

IV. Validation Inspections

The Federal validation inspections of CLIA-exempt laboratories, as specified in § 493.517, will be conducted on a representative sample basis as well as in response to substantial allegations of noncompliance (complaint inspections). The outcome of those validation inspections will be HCFA's principal tool for verifying that the laboratories located in and licensed by the State are in compliance with CLIA requirements.

This Federal monitoring is an on-going process. The State of Washington will provide HCFA with survey findings for each laboratory selected for validation.

The CLIA exemption of laboratories located in and licensed by the State may be removed if HCFA determines the outcome and comparability review of validation inspections are not acceptable as described under § 493.521 or if the State fails to pay the required fee every two years as required under § 493.646.

V. Laboratory Data

In accordance with § 493.513(d)(2)(iii), Washington State will provide HCFA with changes to a laboratory's specialties or subspecialties based on the State's survey. The State will also provide HCFA with changes in a laboratory's certification status, such as a change from a regular certificate to a certificate of waiver.

VI. Required Administrative Actions

CLIA is intended to be a totally user-fee funded program. The registration fee paid by the laboratories is intended to cover the cost of the development and administration of the program. However, once a State's application for exemption is approved, HCFA may not charge a fee to laboratories in the State. The State's share of the costs associated with CLIA must be collected from the State.

42 CFR 493.645 specifies that HHS will assess fees that a State must pay for the following:

- Costs of Federal inspection of laboratories in the State to verify that standards are enforced in an appropriate manner. The average cost per validation survey nationally is multiplied by the number of surveys that will be conducted.

- Costs incurred for Federal investigations and surveys triggered by complaints that are substantiated. We will bill the State on a semi-annual basis. We anticipate that most of these surveys will be referred to the State and that there will be little Federal activity in this area.

- The State's proportionate share of general overhead costs to develop and implement CLIA. The amount of this share consists of the costs of certification/enforcement procedures, billing and data systems, training and public information, fiscal and administrative services, FDA's Reviews for Quality Control of manufacturers' equipment for the laboratory community, CDC's overhead including development of standards, analyses, and studies, and indirect costs for all.

In order to estimate the State's proportionate share of the general overhead costs to develop and implement CLIA we determined the ratio of laboratories in the State to the total number of laboratories nationally. Approximately 1.6 percent of the registered laboratories are in Washington State. In that the general overhead costs apply equally to all laboratories, we determined that 1.6 percent of the cumulative overhead costs should be borne by the State of Washington.

Washington has agreed to pay us the State's pro rata share of the overhead costs and anticipated costs of actual validation and complaint investigation surveys. A final reconciliation for all laboratories and all expenses will be made. We will reimburse the State for any overpayment or bill it for any balance.

VI. Approval

HCFA grants CLIA exemption for all specialties and subspecialties to all laboratories located in and licensed by the State of Washington effective October 6, 1993 to October 6, 1994.

VII. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice such as this that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Also, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all laboratories to be small entities. Individuals and States are not included in the definition of small entity.

Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice such as this that may have a

significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice announces the exemption of laboratories licensed by the State of Washington from the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). This exemption is conditioned upon the State establishing that the quality of laboratory services meets standards substantially equivalent to those of the CLIA program. The State also has established that it has a program to monitor and evaluate compliance with the standards. The effect of the exemption from CLIA requirements is to place laboratories under State regulation, rather than Federal regulation, with no discernible difference in the operations of the programs. Consequently, we anticipate no effect on the quality or availability of services.

There may be an impact on the costs of laboratory services in Washington. As stated above, CLIA is intended to be a totally user-fee funded program, with the fees paid by the laboratories covering the costs of the development and administration of the program. However, if a laboratory is located in a State that has had its licensure and inspection program approved by HHS, the State is responsible for paying HCFA any CLIA associated fees. Individual laboratories in that State are exempt from CLIA's requirements and need not apply to HCFA for certification, pay any Federal CLIA certificate fee(s), or undergo the routine onsite CLIA compliance survey for which HCFA is responsible. However, the laboratories must comply with State requirements concerning certification, pay certificate fees, and meet State survey and inspection requirements. The manner in which the State assesses fees could have some minimal impact on facilities and recipients of services within the State.

In order for Washington to receive approval for exemption of its laboratories, it agreed to pay HCFA for the following:

- The costs of Federal inspections of State-exempt laboratories on a sample basis to "validate" that the Washington licensing program is applying standards at least equal to the CLIA standards.
- The costs incurred for investigations of complaints against the laboratories under the Washington

program if the complaint is substantiated.

- The costs of Washington's pro rata share of general overhead to develop and implement CLIA.

The annual costs of validation inspections will be based on the Federal costs to perform surveys of 5 percent of those State laboratories subject to validation inspections. This sample size will give us assurance that practices in Washington are, in fact, equivalent to those of the Federal CLIA program.

With respect to complaint investigation surveys, we expect that most of these surveys will be referred to the State, and there will be little Federal activity in this area. The State will incur a cost only in the event of substantiated complaints and our experience with related programs indicates a very low volume of substantiated complaints.

The State's proportionate share of the general overhead costs would be determined by comparing the number of laboratories in Washington to the total number of laboratories nationally. Approximately 1.6 percent (2,364) of all registered laboratories are in Washington, and we have used this percentage to allocate that percentage of overhead and startup costs to Washington as their exemption fee.

In computing the overhead and start up costs portion of the exemption fee, we considered actual incurred and some projected expenses for fiscal years (FYs) 1992-1994. We took into account program costs for the Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration (FDA), as well as HCFA costs, because some of these agencies' program activities will always have potential impact on all program participants, including State exempt laboratories. The HCFA program categories included in the chargeable base and for which an exempt State may be billed a portion of the costs include:

- **Certification and Enforcement Procedures**—Included are the cost of development of the regulations and surveyor guidelines that are pertinent to all participants.
- **Billing and Data Systems**—Included are charges for data entry and systems development contracts.
- **Fiscal and Administrative Services**—Included are costs for the portion of regional and central office staff responsible for contract and budget negotiation, support and monitoring.
- **Training and Public Information**—Included are charges incurred because HCFA provides the training for surveyors (including those in Washington), as well as provides other services such as telephone hot-lines and printing educational materials.

- **Indirect Costs**—This category includes a percentage of HCFA's overhead expenses.

Excluded from the computation of the chargeable costs are expenses for the State survey program and regional office surveys, program functions performed for those not applying for exemptions.

Because a State is not required to address whether, or how, they plan to recoup the costs of administering its laboratory program when applying for CLIA exemption, we are unable to state exactly what impact our approval of Washington's laboratory program will have on laboratories, Medicare users of laboratory services, or non-Medicare users of laboratory services. By applying for CLIA exemption, the State has agreed to pay the costs identified above. If the State were to choose to pass on the costs associated with obtaining this exemption equally to the individual laboratories, it would result in an average increase in costs per laboratory of less than \$300.

Therefore, it is clear that this notice does not meet any of the E.O. 12291 criteria. Hence, this notice is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

Based on the illustration of the amounts involved, this notice would not have a significant economic impact on a substantial number of small entities. We have provided the computation to illustrate the potential average cost to laboratories. The laboratories, in turn, could pass on the costs to users of laboratory services. Medicare beneficiaries would be protected from any increased costs because laboratory services are paid on a fee schedule. Non-Medicare users of laboratory services could be asked to bear additional costs, although we do not believe the amounts would be significant based on the potential average cost to laboratories. For these reasons, we have determined, and the Secretary certifies, that this notice does not result in a significant impact on a substantial number of small entities and does not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Dated: July 14, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 93-24532 Filed 10-5-93; 8:45 am]

BILLING CODE 4120-01-P

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1993.

Name: Subcommittee on Process of the Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: November 8, 1993, 9 a.m.-5 p.m.

Place: Conference Room C, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: This Subcommittee is responsible for seeking, receiving, and analyzing systematic feedback (from interested parents' groups, petitioners' attorneys, etc.) on the implementation of the Vaccine Injury Compensation Program (VICP) and for making recommendations to the full Commission for appropriate changes in the system in order to improve the processes and procedures used by the various parties involved in the VICP.

Agenda: The Subcommittee will review and clarify and make recommendations on expert witness and attorney fee issues discussed at its September 21, 1993 meeting. The Subcommittee will formulate recommendations for the ACCV meeting to be held on December 1-2, 1993.

Public comment will be permitted prior to the lunch break and at the end of the meeting. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation by November 1 to Mr. Bryan K. Johnson, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 702, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443-6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room C before 10 a.m. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Commission should contact Mr. Matthew B. Barry, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Room 702, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443-6593.

Agenda Items are subject to change as priorities dictate.

Dated: September 30, 1993.

Jackie E. Baum,

Advisory Committee Management Officer,
HRSA.

[FR Doc. 93-24516 Filed 10-5-93; 8:45 am]

BILLING CODE 4180-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-030-5101-10-XFKL; N-51606]

Extension of Public Comment Period for the Draft Bedell Flat Pipelines Rights-of-Way Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of the public comment period for the Draft Bedell Flat Pipelines Rights-of-Way Environmental Impact Statement to October 22, 1993.

SUMMARY: The U.S. Bureau of Land Management has extended the public comment period for the Draft Environmental Impact Statement (EIS) on the Bedell Flat pipelines rights-of-way. The EIS analyzes the impacts of a proposal by Washoe County, Nevada, for pipeline rights-of-way across public land to accommodate a portion of the facilities needed for Washoe County's project to transport water from eastern Honey Lake Valley, Nevada, through Bedell Flat to Lemmon Valley, Nevada.

DATES: The comment period has been extended from September 22, 1993 to October 22, 1993.

ADDRESSES: Please address written comments to: James M. Phillips, Lahontan Area Manager, U.S. Bureau of Land Management, 1535 Hot Springs Rd., suite 300, Carson City, NV 89706-0638.

FOR FURTHER INFORMATION CONTACT: David Loomis, EIS Project Manager, U.S. Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, NV 89706-0638; (702) 885-6149.

SUPPLEMENTARY INFORMATION: Copies of the Draft EIS are available for review at public libraries in Washoe County, Nevada and Lassen County, California; the Nevada State Library in Carson City; and the libraries of the University of Nevada, Reno; the University of Nevada, Las Vegas; and Lassen Community College in Susanville, California. Public reading copies are available for review at the following BLM locations:

Nevada State Office, 850 Harvard Way, Reno, Nevada 89520.

California State Office, 2800 Cottage Way, room E-2841, Sacramento, California 95825.

Carson City District Office, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706.

Susanville District Office, 705 Hall Street, Susanville, California 96130.

Eagle Lake Resource Area, 471-850 Johnstonville Drive, Susanville, California 96130.

Dated: September 29, 1993.

Billy R. Templeton,
Nevada State Director.

[FR Doc. 93-24459 Filed 10-5-93; 8:45 am]

BILLING CODE 4310-HC-M

[OR 50237; OR-080-03-4212-05; GP3-433]

Realty Action; Proposed Recreation and Public Purposes Act Classification

September 27, 1993.

The following described public land has been examined and determined to be suitable for classification for lease under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.):

Willamette Meridian, Oregon

T. 6 S., R. 3 E.,

Sec. 7, SE $\frac{1}{4}$ NW $\frac{1}{4}$ excepting therefrom a tract of land as described in instrument recorded October 13, 1949, in Book 424, page 723,

E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 18, W $\frac{1}{2}$ E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;

Sec. 19, W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$;

Sec. 30, E $\frac{1}{2}$;

Sec. 31, E $\frac{1}{2}$;

Sec. 32, W $\frac{1}{2}$ W $\frac{1}{2}$;

T. 7 S., R. 3 E.,

Sec. 6, Lots 1 and 2, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$;

Sec. 7, Lots 5 and 6, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 8, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 13, SW $\frac{1}{4}$;

Sec. 14, Lots 1-8, inclusive;

Sec. 15, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ excepting therefrom two tracts of land as described in instruments recorded April 1, 1936, in Book 231, page 289, and February 3, 1944, in Book 320, page 60;

Sec. 16, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ excepting therefrom a tract of land as described in instrument recorded October 26, 1944, in Book 333, page 610;

Sec. 17, N $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$.

The above-described lands contain 4,441.93 acres in Clackamas County.

The subject lands are proposed to be leased to a local or state governmental agency for the "Molalla River Recreation Area". The land and the improvement would continue to be managed by the Bureau of Land Management. The purpose for leasing the land would be to keep this portion of the Molalla River free from mining claim conflicts for the benefit of the outdoor recreation uses,

including recreational mining activities. This portion of the Molalla River has long been a popular area for swimming, fishing, camping, picnicking, sightseeing, and recreation mining. Issuance of the lease would ensure that these activities would continue without the usual conflicts with mining claimants. The public would be well served by issuing a lease for these lands as proposed. The lease would be consistent with current BLM land use planning and will be in the public interest.

The lease, when granted, will be subject to the following:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulation of the Secretary of the Interior.

2. Proposed lease would have a term of 25 years.

3. The reversionary requirements of 43 CFR 2741.9.

Detailed information concerning this action is available for review at the Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97306.

Upon publication of this notice in the *Federal Register*, the land will be segregated from all other forms of appropriation under the public land laws, including the mining laws, except the mineral leasing laws and for lease under the Recreation and Public Purposes Act. The segregation shall automatically terminate: (1) In 18 months from the date of this publication in the *Federal Register* if no application for lease has been filed on the lands so classified; or (2) upon publication in the *Federal Register* of an opening order.

For a period of 45 days from the date of publication of this notice in the *Federal Register*, interested parties may submit comments to the District Manager, Salem District Office, at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Elena C. Daly,

Clackamas Area Manager.

[FR Doc. 93-24467 Filed 10-5-93; 8:45 am]

BILLING CODE 4310-33-M

ACTION: Exchange of public and private lands.

SUMMARY: This action informs the public of the conveyance of 478.16 acres of public land out of Federal ownership. This action will also open 480.00 acres of reconveyed land to appropriation under the public land laws.

FOR FURTHER INFORMATION CONTACT: Michael L. Crocker, Bureau of Land Management, Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145-0155, 801-539-4118.

SUPPLEMENTARY INFORMATION: 1. The United States has issued an exchange conveyance document to Douglas E. Larson and Charles M. Larson for the surface estate of the following described land pursuant to Section 206 of the Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716):

Salt Lake Meridian

T. 8 S., R. 5 W.,
Sec. 18, lots 3, 4, E $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 19 lots 1, 2, 4, 5,
W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$,
E $\frac{1}{2}$ W $\frac{1}{2}$.
Containing 478.16 acres.

2. In exchange for the lands listed in paragraph 1, the United States received the surface estate of the following described land:

Salt Lake Meridian

T. 8 S., R. 6 W.,
Sec. 9, E $\frac{1}{2}$ E $\frac{1}{2}$;
Sec. 12, E $\frac{1}{2}$ W $\frac{1}{2}$;
Sec. 15, E $\frac{1}{2}$ W $\frac{1}{2}$.
Containing 480.00 acres.

3. At 7:45 a.m., on November 5, 1993, the lands described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m. on November 5, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The purpose of this exchange was to acquire three parcels of land that are located along the Pony Express Trail. The entire Pony Express Trail (California to Missouri) was designated as a National Historic Trail by Congress in 1992.

Ted D. Stephenson,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-24478 Filed 10-5-93; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-029-03-4210-04; U-70295]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands in Utah County, Utah.

SUMMARY: The Bureau of Land Management proposes a direct, non-competitive sale of 40 acres in Utah County to the adjoining landowner.

This notice provides a public comment period and segregates the lands described from entry under the public land laws and location under the mining laws, but not the mineral leasing laws or the material sale laws.

DATES: Comments must be received no later than November 22, 1993.

ADDRESSES: Comments should be sent to the District Manager, BLM Salt Lake District, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Michael G. Nelson, Realty Specialist, BLM Salt Lake District Office, (801) 977-4300.

SUPPLEMENTARY INFORMATION: The following described lands have been found suitable for disposal pursuant to the provisions of section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756, 43 U.S.C. 1701, 1713): at not less than the estimated fair market value of \$9000.

Salt Lake Meridian, Utah

T. 5 S., R. 1 W., SLM
Section 29, SE $\frac{1}{4}$ SE $\frac{1}{4}$.

The land will be sold by direct sale to Cedar Valley Farms no less than 60 days after date of publication of this notice in the *Federal Register*. If the land is not sold within 90 days after the date of this sale, the land will become available for purchase over the counter on a first come basis until it is sold.

In accordance with the regulations in 43 CFR 2711.1-2(d), the lands described above are hereby segregated from entry under the public land laws, including the mining laws, but not the mineral leasing laws or material sale laws. The segregation of the above described lands shall terminate upon issuance of a patent or other document of conveyance to such lands, upon publication of a notice in the *Federal Register* of termination of the segregation or 270 days from the date of this publication, whichever occurs first.

The public is hereby notified that comments may be submitted to the District Manager at the address shown above within the comment period identified above. Any adverse comments will be evaluated by the

[UT-942-4212-13; UTU-68277]

Notice of Issuance of Land Exchange Conveyance Document; Utah

AGENCY: Bureau of Land Management, Interior.

District Manager who may modify or vacate this realty action and issue a final determination. In the absence of any action by the State Director, this notice of realty action will become the final determination of the Department of the Interior and a sale can be held after 60 days from the publication of this notice.

Deane H. Zeller,
District Manager.

[FR Doc. 93-24555 Filed 10-5-93; 8:45 am]
BILLING CODE 4310-DQ-M

Bureau of Reclamation

Proposed Renewal of Master Water Service Contract, Cachuma Project Santa Barbara County, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement/environmental impact report and notice of scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and section 21002 of the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation), the Cachuma Project Authority (Authority), and the Santa Barbara County Water Agency (Agency) propose to prepare a joint environmental impact statement/environmental impact report (EIS/EIR) for renewing a contract providing water service to several agencies from the Cachuma Project, Santa Barbara County, California.

DATES: Comments are requested concerning the scope of analysis of the draft EIS/EIR. Comments are also requested concerning Reclamation's intent to prepare a joint document with the Authority and the Agency. Any person may participate in the scoping process by submitting written comments to Mr. Bob May, Bureau of Reclamation, at the address listed below. Written comments are to be postmarked no later than November 24, 1993. Three public scoping meetings have been scheduled. The meetings are designed to solicit public input to assist Reclamation and local water agencies in determining the suitability of a combined EIS/EIR and the scope of the EIS/EIR. The public will be asked to identify issues and concerns related to the proposed contract renewal. The meetings will be held on Monday, November 15, 1993, at 7:30 p.m. and Tuesday, November 16, 1993, at 2 p.m. and 7 p.m. and Wednesday, November 17, 1993, at 7 p.m.

ADDRESSES: Written comments should be addressed to Mr. Bob May at 2666 North Grove Industrial Drive, suite 106, Fresno, CA 93727-1551. The scoping meetings will be held at the following locations:

- Monday November 15, 1993, at the Solvang Veterans Memorial Building, Vets Wing, 1745 Mission Drive, Solvang, CA 93460
- Tuesday November 16, 1993, at Santa Barbara County Planning Commission Hearing Room, 123 E. Anapamu Street, Santa Barbara, CA 93101;
- Wednesday November 17, 1993, at the City of Lompoc, City Hall Council Chambers, 100 Civic Center Plaza, Lompoc, CA 93438;

FOR FURTHER INFORMATION CONTACT: Mr. Bob May, Bureau of Reclamation, FRO-425, Fresno Project office, 2666 North Grove Industrial Drive, suite 106, Fresno, CA 93727-1551, telephone: (209) 487-5116 (TDD 209/487-5933), Mr. Chris Dahlstrom, Project Coordinator, Cachuma Project Authority, 3301 Laurel Canyon Road, Santa Barbara, CA 93105-2017, telephone: (805) 569-1391, and Mr. Robert Almy, Manager, Santa Barbara County Water Agency, 122 W. Figueroa Street, suite B, Santa Barbara, CA 93101, telephone: (805) 568-3540.

SUPPLEMENTARY INFORMATION: The EIS/EIR will consider the effects of renewing a master contract under which water service has been provided to the following Cachuma Project member units: The City of Santa Barbara; Goleta Water District; Montecito Water District; Summerland County Water District; Carpinteria County Water District; and the Santa Ynez River Water Conservation District, Improvement District No. 1. The Cachuma Project has been the principal water supply for the above member units since it was constructed by Reclamation in 1955. The original Cachuma Project Master Contract (No. I75r-1802) was executed September 12, 1949. Initial water deliveries began on May 15, 1955 and this contract will expire May 15, 1995.

The proposed action to be evaluated in the EIS/EIR is the continuation of water deliveries to the member units from the Cachuma Project by means of a renewed water service contract or repayment contract. The contract is governed by the Act of Congress of June 17, 1902, and all Reclamation acts amendatory thereof or supplementary thereto. The contract was written pursuant to section 9(c)(2) and 9(e) of the Reclamation Project Act of 1939. The authority for contract renewal is pursuant to the Act of July 2, 1956, 70

Stat. 483 (1956 Act) and the Act of June 21, 1963, 77 Stat. 68 (1963 Act).

Alternatives, including the no action alternative, will be evaluated in the environmental documentation, and will be further developed during the scoping process. The alternatives selected for evaluation may consider the following issues: Water quantity, water pricing, water delivery practices, contract duration, water transfer/exchanges, environmental considerations including water quantity, water quality, instream flows, water conservation, improved efficiency, groundwater management, and fish and wildlife resources.

The draft EIS/EIR is expected to be completed and available for review and comment late in 1994.

Note: Anyone requiring special services should contact Mr. Bob May at the above phone number. Please call as far in advance of the meetings as possible, and no later than November 10, 1993, to enable Reclamation to meet your needs. If a request cannot be honored, the requester will be notified.

Dated: September 30, 1993.

Donald R. Glaser,
Deputy Commissioner.

[FR Doc. 93-24553 Filed 10-5-93; 8:45 am]
BILLING CODE 4310-04-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

Applicant: EG&G Energy Measurements, Inc., Las Vegas, NV; PRT-683011

The applicant requests amendment of their permit to collect and preserve up to 15 specimens each of California jewelflower (*Caulanthus californicus*), Kern mallow (*Eremalche dernensis*) and San Joaquin woolly threads (*Lembertia congdonii*) in Kern County, California, for the purposes of validating new distributions and teaching identification to individuals who will conduct population surveys of these species for the enhancement of survival of the species.

Applicant: California Dept. of Transportation, Santa Anna, CA; PRT-783010

The applicant requests a permit to survey for Least Bell's vireo (*Vireo belli pusillus*) to determine the presence or absence of the species on State roadways or properties in southern California. The applicant also plans to

remove predator species from observed vireo nests.

Applicant: Woodland Park Zoological Garden, Seattle, WA; PRT-782998

The applicant requests a permit to import one wild-born female western lowland gorilla (*Gorilla gorilla gorilla*) from the Metropolitan Toronto Zoo, Toronto, Ontario, Canada, to enhance the propagation and survival of the species.

Applicant: The Hawthorne Corporation, Grayslake, IL, PRT-783218

The applicant requests a permit to import two pairs of captive-born tigers (*Panthera tigris*) from Germany. These tigers are the progeny of the applicant's own tigers that are currently performing in Germany. The tigers will be imported for purposes of captive-breeding. In the future, the applicant will export and re-import these animals for the same purposes.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, VA 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: October 1, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93-24551 Filed 10-5-93; 8:45 am]

BILLING CODE 4310-66-M

National Park Service

Restoration of the Elwha River Ecosystem and Native Anadromous Fisheries

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of availability and request for comments; Notice of open house/public workshop.

SUMMARY: With this notice, the National Park Service announces the availability for review and comment of a Draft Report entitled, *The Elwha Report: Restoration of the Elwha River Ecosystem and Native Anadromous*

Fisheries. This report is required by The Elwha River Ecosystem and Fisheries Restoration Act, Public Law 102-495. The National Park Service also announces an Open House/Public Workshop will be held in Port Angeles, Washington, at the Port Angeles High School library, 304 East Park Avenue, on October 18, from 4 p.m. to 8 p.m. Questions will be answered and written and verbal comments will be accepted at this workshop. The Report will be delivered to Congress by January 31, 1994.

DATES: Comments must be received by November 8, 1993.

ADDRESSES: Comments must be submitted in writing to: Dr. Brian Winter, Team Leader, Elwha Restoration Interagency Team, Olympic National Park, 600 East Park Avenue, Port Angeles, Washington 98362-6757.

FOR FURTHER INFORMATION CONTACT: Dr. Winter, same address as above, or telephone (206) 526-6172.

SUPPLEMENTARY INFORMATION: Copies of the Draft Report will be available in most Olympic Peninsula and Puget Sound area public libraries.

Dated: September 28, 1993.

Maureen Finnerty,

Superintendent, Olympic National Park.

[FR Doc. 93-24558 Filed 10-5-93; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31993 (Sub-No. 1)]

San Joaquin Valley Railroad Co.— Acquisition and Lease Exemption— Southern Pacific Transportation Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343-45 the purchase by San Joaquin Valley Railroad Co. (SJVR) of 206.77 miles of rail line in Fresno, Tulare, Kern, and Kings Counties, CA, owned by Southern Pacific Transportation Company (SP) and SJVR's lease of the underlying rights-of-way. The transactions involve: (1) The Exeter Branch, between milepost 206.15, near Fresno, and milepost 308.64, at Famoso; (2) the Coalinga Branch, between milepost 240.15, at Goshen Junction, and milepost 282.23, near Huron; (3) the Stratford Branch, between milepost 263.44, at Rossi, and milepost 271.69, at

Stratford; (4) the Visalia Branch, between milepost 246.01, at Goshen Junction, and milepost 262.67, at Exeter; (5) those segments of the Clovis Branch between milepost 206.15, near Fresno, and milepost 206.99, and between mileposts 212.50 and 223.15, near Clovis; (6) the Richgrove Branch, between milepost 295.01, at Richgrove, and milepost 299.17, at Jovista; (7) the Visalia Electric Branch, between milepost 0.00, at Exeter, and the end of the line at milepost 1.13, near Citro Junction; (8) the Arvin Branch, between milepost 316.80, at Maguaden, and milepost 333.55, at Arvin; and (9) the Oil City Branch, between milepost 308.74, at Oil Junction, and milepost 312.50, at Maltha. SJVR is purchasing SP's undivided one-half interest in the Arvin and Oil City Branches. The exemption is subject to standard employee protective conditions.

DATES: The exemption is effective on October 8, 1993. Petitions to stay or reopen must be filed by October 7, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 31993 (Sub-No. 1) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Fritz R. Kahn, Klein & Bagileo, Suite 120, 1101 30th Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5610. [TDD for hearing impaired (202) 927-5721.]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927-5721].

Decided: September 30, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-24648 Filed 10-5-93; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork

Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

- (1) The title of the form/collection;
- (2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
- (3) How often the form must be filled out or the information is collected;
- (4) Who will be asked or required to respond, as well as a brief abstract;
- (5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
- (6) An estimate of the total public burden (in hours) associated with the collection; and,
- (7) An indication as to whether Section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514-4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

- (1) Immigration and Naturalization Service Applicant Survey
- (2) G-942. Immigration and Naturalization Service
- (3) On occasion
- (4) Individuals or households, Federal agencies or employees.

This data collection is needed to ensure compliance with Federal laws and regulations which mandate equal opportunity in the recruitment of applicants for Federal employment.

- (5) 75,000 annual respondents at .07 hours per respondent
- (6) 5,250 annual burden hours
- (7) Not applicable under section 3504(h)

Public comment on these items is encouraged.

Dated: September 30, 1993.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 93-24476 Filed 10-5-93; 8:45 am]

BILLING CODE 4410-10-M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Portland Cement Assoc.

Notice is hereby given that, on August 30, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Canadian Medusa Cement Limited, Owen Sound, Ontario, CANADA has joined the PCA, and National Cement Company, Inc., has changed its name to National Cement Company of Alabama, Inc., Birmingham, AL. In addition, two affiliate members, Northern California Cement Promotion Group and Southern Cement Promotion Council have merged to form California Cement Promotion Council, Danville, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the *Federal Register* pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015.

The last notification was filed with the Department on May 27, 1993. A notice was published in the *Federal Register* pursuant to section 6(b) of the Act of June 16, 1993, 58 FR 33284.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-24520 Filed 10-5-93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Michigan State Standards; Approval

Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for the Occupational Safety and Health (hereinafter called the Regional Administrator), under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On October 3, 1973, notice was published in the *Federal Register* (38 FR 27338) of the approval of the Michigan plan and the adoption of subpart T part 1952 containing the decision.

The Michigan plan provides for the adoption of Federal standards as State standards by reference. OSHA regulations (29 CFR 1953.22 and 23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the *Federal Register*, and within 30 days for emergency temporary standards. Although adopted Federal standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in part 1953, they are enforceable by the State prior to Federal review and approval.

By notice published in the *Michigan Register* and incorporated as part of the plan, Michigan has adopted State standards comparable to:

1. Occupational Exposure to Hazardous Chemicals in Laboratories, 29 CFR 1910.1450 as published in the *Federal Register*, Volume 55, No. 21 dated January 25, 1992.

2. Hazardous Waste Operations and Emergency Response, 29 CFR 1910.120 as published in the *Federal Register*, Volume 55, No. 72 dated April 13, 1990.

These standards were promulgated after notice was published offering an opportunity for public comments and/or requests for public hearings. These standards were adopted by reference according to the provision of Michigan

Act 154 of 1974, as amended, effective January 1, 1975.

Decision

Having reviewed the State submission in comparison with Federal standards, it has been determined that the State standards are identical to comparable Federal standards.

Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 230 S. Dearborn Street, room 3244, Chicago, Illinois 60604; State of Michigan, Department of Public Health, 3423 North Logan Street, Lansing, Michigan 48909; and the Directorate of Federal-State Operations, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation

Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process, or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Michigan State Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective October 6, 1993.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Chicago, Illinois this 9th day of August.

Michael G. Connors,

Regional Administrator.

[FR Doc. 93-24531 Filed 10-5-93; 8:45 am]

BILLING CODE 4510-26-M

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of title I of the Presidential Recordings and Materials Preservation Act ("PRMPA", 44 U.S.C. 2111 note) and § 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventoried, and prepared for public access Nixon Presidential historical materials relating to POW/MIA matters and other previously restricted documents.

DATES: The National Archives intends to make the materials relating to POW/MIA matters and other previously restricted documents described in this notice available to the public beginning November 10, 1993. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right or privilege before November 8, 1993.

ADDRESSES: The materials will be made available to the public in the Central Research Room at the National Archives Building located at 7th and Pennsylvania Avenue, NW., Washington, DC.

Petitions asserting claims of legal rights or privilege must be sent to the Archivist of the United States, National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Clarence F. Lyons, Jr., Acting Director, Nixon Presidential Materials Staff, (703) 756-6498.

SUPPLEMENTARY INFORMATION: The materials to be opened total approximately 1.6 cubic feet.

National Security Council Files (1.5 cubic feet)

Documents which have been identified, reviewed, and declassified relating to POW/MIA matters located in the National Security Council files among the Nixon Presidential materials will be made available to the public on November 10, 1993.

Previously Restricted Materials (less than .1 cubic foot)

A number of documents which were previously withheld from public access have been reviewed and declassified under the Mandatory Review provisions of Executive Order 12356 and will be made available to the public on November 10, 1993. Public access to

some of the items will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (PRMPA Regulations).

Dated: September 29, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93-24557 Filed 10-5-93; 8:45 am]

BILLING CODE 7515-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Hearing

AGENCY: Physician Payment Review Commission.

ACTION: Notice of hearing.

SUMMARY: The Physician Payment Review Commission has scheduled a hearing for Monday, November 29 and Tuesday, November 30, 1993, to give interest groups the opportunity to comment on the issues the Commission plans to address in its next annual report to Congress. Much of the Commission's work in the coming months will focus on issues related to health system reform in addition to ongoing work on Medicare and Medicaid. A list of topics included in the Commission's work plan can be obtained from the Commission office. This hearing is structured to enable the Commission to consider the views of groups affected by its work before it completes its analyses and develops recommendations for the 1994 report.

If your organization wishes to testify, please contact Lauren LeRoy or Anne Schwartz at 202/653-7220 no later than Tuesday, October 12, 1993. When you request to testify, please indicate which topics you expect to cover in your testimony. Because of the limited time available, not all groups will be invited to appear. All groups, however, will have the opportunity to present their views in writing for the record.

The hearing will be held at the Washington Marriott Hotel, 1221 22nd Street NW., Washington, DC. Organizations and individuals will be notified by Friday, October 15 whether they have been selected to appear at the hearing. The hearing schedule will be available for the public on November 1, 1993 and will be mailed at that time.

ADDRESSES: The Commission is located at 2120 L Street, NW., in suite 510, Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, or Anne Schwartz, at 202/653-7220.

SUPPLEMENTARY INFORMATION: Two hundred (200) copies of your

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

organization's testimony or written statement (including a one-page executive summary) must be submitted to the Commission's office no later than 5 p.m. on Tuesday, November 16, 1993.

Paul B. Ginsburg,
Executive Director.

[FR Doc. 93-24560 Filed 10-5-93; 8:45 am]

BILLING CODE 8820-6E-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32989; File No. SR-Amex-92-11]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending the Minor Rule Violation Fine System Under Rule 590 and Minor Rule Violation Enforcement and Reporting Plan

September 29, 1993.

I. Introduction

On April 22, 1992, as subsequently amended on February 16 and August 16, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its minor rule violation fine system contained in Amex Rule 590 to give the Exchange's Minor Floor Violation Disciplinary Committee the authority to fine floor members for certain minor rule violations and to add certain violations of the Exchange's rules to its Minor Rule Violation Plan ("Plan").³ On February 16, 1993, the Amex submitted to the Commission Amendment No. 1 to the proposal.⁴ On

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1991).

³ The Exchange has also requested approval, under Rule 19d-1(c)(2), 17 CFR 240.19d-1(c)(2), to amend its Rule 19d-1 minor rule violation enforcement and reporting plan to include the amendments contained in this proposal. See letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Mary Revell, Branch Chief, Commission, dated April 21, 1992. The Commission approved the Amex's Plan in Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14068 (April 9, 1985) (File No. 4-260) relieving the Amex of the current reporting requirements imposed under section 19(d)(1) of the Act and Amex Rule 590 in Securities Exchange Act Release No. 27543 (December 15, 1989), 54 FR 53223 (December 27, 1989) (File No. SR-Amex-89-06).

⁴ See letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Diana Luka-Hopson, Branch Chief, Commission, dated February 12, 1993. Amendment No. 1 gives the Exchange's Minor Floor Violation Disciplinary Committee the authority to fine floor members for certain minor floor violations.

August 16, 1993, the Amex submitted to the Commission Amendment No. 2 to the proposal.⁵

The proposed rule change was published for comment in Securities Exchange Act Release No. 32604 (July 8, 1993), 58 FR 37980 (July 14, 1993). No comments were received on the proposal.

II. Background

In 1984, the Commission adopted amendments to paragraph (c) of Securities Exchange Act Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations.⁶ Subsequently, the Commission approved an Amex proposal for a minor rule violation disciplinary system and for the abbreviated reporting of minor rule violations pursuant to Rule 19d-1(c) under the Act.⁷ Accordingly, the Amex is relieved of the current reporting requirements of section 19(d)(1) with respect to disciplinary action taken pursuant to the Exchange's Plan.⁸

The Amex's existing Plan, as embodied in Amex Rule 590, authorizes the Exchange, in lieu of commencing a disciplinary proceeding before a hearing panel, to impose a fine not to exceed \$2,500 on any individual or \$5,000 on any member organization, for a minor rule violation of certain specified Exchange rules.⁹ The Amex's Plan

⁵ See letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Diana Luka-Hopson, Branch Chief, Commission, dated August 13, 1993. Amendment No. 2 makes technical, non-substantive changes and clarifies the Exchange's proposal.

⁶ See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838 (June 8, 1984). See *infra* note 8 for a discussion of periodic reporting under a minor rule plan.

⁷ See Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14068 (April 9, 1985) (File No. 4-260).

⁸ Pursuant to paragraph (c)(1) of Rule 19d-1, an SRO is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d-1, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic (quarterly), as opposed to immediate, basis.

⁹ Although the Amex's Board of Governors makes the initial determination of whether an Exchange rule violation is "minor" for purposes of inclusion in new Rule 590, this determination is subject to Commission review pursuant to sections 19 (b)(1) and (d)(1) of the Act and Rules 19b-4 and 19d-1(c)(2) thereunder. The Commission notes that Rule

permits any person to contest the Exchange's imposition of the fine through the submission of a written answer, at which time the matter will become a disciplinary proceeding subject to Article V, section 1(b) of the Exchange's Constitution, and, where applicable, the reporting provisions of paragraph (c)(1) of Rule 19d-1 under the Act.

III. Description of the Proposal

Currently, under part 1 of Amex Rule 590, the Exchange's Enforcement Department is authorized, after a matter has been referred to it, to impose fines ranging from \$500 to \$2,500 against individuals and from \$1,000 to \$5,000 against member firms, for a series of substantive minor rule violations listed in the rule.¹⁰ The member or member organization may plead guilty and pay the fine or contest the charge and request a hearing before an Exchange Disciplinary Panel.¹¹

The Amex proposes several amendments to Rule 590. First, the Exchange proposes to create a new Committee composed of Floor members, the Minor Floor Violation Disciplinary Committee ("Disciplinary Committee"), giving it the authority to review certain minor floor violations and to fine floor members under Rule 590.¹² Currently, the Exchange's Committee on Specialist and Registered Trader Performance ("Performance Committee") is delegated authority by the Board of Governors ("Board") to review specialist and registered trader performance and to take certain actions in an effort to improve inadequate performance. Among the actions it can take are the following: Sending admonitory letters; prohibiting specialist units from applying for allocations for specified periods of time; recommending to the Allocations Committee that securities be

590 fines in excess of \$2,500 are not considered assessed pursuant to the Plan and, accordingly, must be reported on an immediate basis to the Commission under section 19(d)(1) of the Act.

¹⁰ Part 2 of Rule 590 provides for a fine system for floor decorum violations; Part 3 authorizes fines for the late filing of reports required to be submitted to the Exchange.

¹¹ See Amex Constitution, Article V, section 1(b) and Amex Rule 590 (c) and (d).

¹² The Disciplinary Committee would be composed of a total of twenty-one floor members. When this Committee convenes to review minor floor violations, a Chairman would be selected from a roster of three floor Governors, three specialists would be selected from a roster of six specialists, three floor brokers would be selected from a roster of six floor brokers and three traders would be selected from a roster of six traders. Telephone conversation between Bruce Ferguson, Associate General Counsel, Legal and Regulatory Policy Division, Amex and Diana Luka-Hopson, Branch Chief, Division of Market Regulation, Commission, on September 28, 1993.

reallocated; and referring the matter to the Exchange's Enforcement Department for further action.

With respect to certain minor floor violations that it reviews, the Amex states that its Performance Committee does not have an adequate way to deal effectively with the problem of recurring violations. According to the Exchange, where there have been prior violations, an admonitory letter is generally viewed as inadequate, while the Performance Committee's other remedies are often seen as too severe to impose in the case of minor rule violations. The Amex states that giving fining authority to this new Disciplinary Committee will allow the Exchange to maintain the non-disciplinary nature of the Performance Committee.

Under the proposal, certain minor floor violations would be added to part 1 of Rule 590, with the Disciplinary Committee being authorized to impose a fine under the rule with respect to specified violations¹³ and the Enforcement Department being authorized to impose a fine under the rule for other specified violations.¹⁴ The Exchange's current due process procedures will apply to both the Disciplinary Committee and the Enforcement Department's actions, with the member or member organization being able to plead guilty and pay the fine or contest the charge and request a hearing before an Exchange Disciplinary Panel. If a fine imposed by the Disciplinary Committee is contested, the Disciplinary Panel would be composed of three members of the Disciplinary Committee, none of whom would have participated in the initial decision to impose the fine.¹⁵ Any person that contests a fine imposed under Rule 590 would be required to pay a \$100 fee to contest the fine. The fee would be assessed at the conclusion of any Disciplinary hearing if the person is found guilty of the alleged rule violation.¹⁶

The Exchange also proposes to add ten additional violations of Exchange rules to Rule 590. The Enforcement Department would be given the additional power to impose fines for:

¹³ In addition to imposing fines, the Disciplinary Committee will also have the authority to send admonitory letters and refer matters to the Enforcement Department for further action.

¹⁴ The proposed list of minor floor violations for which the Disciplinary Committee will have fining authority is set forth in proposed paragraph (h) of Rule 590. The current list of rule violations for which the Enforcement Department has fining authority under paragraph (g), Rule 590, is also being expanded with the addition of three new violations.

¹⁵ See proposed Amex Rule 590, Commentary .04.

¹⁶ See proposed Amex Rule 590, Commentary .03.

(1) Violation of principal/agent prohibition;

(2) failure to follow proper procedure when establishing a long term investment account; and

(3) failure to properly mark or identify and represent upstairs orders. The Disciplinary Committee would be given the power to impose fines for:

(1) Failure to comply with the Commission's firm quote rule and honoring 10-up market for customer option orders;

(2) Failure to quote option markets within the maximum quote spread differentials;

(3) Failure to comply with option solicitation procedures;

(4) Violation of off-floor trading prohibition;

(5) Failure to comply with Exchange's Auto-Ex policy relating to signing on and off the Auto-Ex system;

(6) Failure to properly mark or identify and represent floor orders as required under Exchange rules; and

(7) Violation of the Exchange's delayed opening policy.

The Amex believes that the Rule 590 fine system has worked well in practice, providing for convenient and quick resolution of minor rule violations. The Amex believes that allowing the newly established Minor Floor Violation Disciplinary Committee to impose fines under Rule 590 will provide it with a very meaningful deterrent to deal more efficiently with these minor floor violations. The Exchange states that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(6) in particular in that it is intended to assure that Exchange members and member firms are appropriately disciplined for rule violations.

IV. Commission Findings

In adopting Rule 19d-1, the Commission noted that the Rule was an attempt to balance the informational needs of the Commission against the reporting burdens of the SROs.¹⁷ In promulgating paragraph (c) of the Rule, the Commission was attempting further to reduce those reporting burdens by permitting, where immediate reporting was unnecessary, quarterly reporting of minor rule violations. The Rule is intended to be limited to rules which relate to areas that can be adjudicated quickly and objectively.

The Commission believes that the Amex proposal to add the rules subject to this proposal to the Plan meet this criteria and should be added to Rule

590. In particular, the Commission believes that the Amex rules proposed to be included in Rule 590 are easily determined and amenable to quick, objective determinations of compliance. Efficient and equitable enforcement of violations of these Amex rules should not entail the complicated factual and interpretative inquiries associated with more sophisticated Exchange disciplinary actions. The Commission also believes that the Amex proposal to create a new Disciplinary Committee to review specified minor rule violations should help to make its disciplinary system more efficient in prosecuting violations of those rules.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) (1), (6) and (7), 6(d)(1) and 19(d).¹⁸ The Amex proposal is consistent with section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of the rules of the exchange. In this regard, the proposal provides an efficient procedure for appropriate disciplining of members in those instances when a rule violation is either technical and objective or minor in nature. Moreover, because the Plan provides procedural rights to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members which is consistent with the requirements of sections 6(b)(7) and 6(d)(1) of the Act.

The Commission also believes that the proposal provides an alternate means by which to deter violations of Amex rules included in the Plan, thus furthering the purposes of section 6(b)(1) of the Act. An exchange's ability to enforce effectively compliance by its members and member organizations with Commission and exchange rules is central to its self-regulatory functions. Inclusion of a rule in an exchange's minor rule violation plan should not be interpreted to mean it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of rules under a minor rule violation plan not only may reduce reporting burdens of an SRO but also may make its disciplinary system more efficient in prosecuting violations of these rules. The Commission believes that adding the

¹⁷ See Securities Exchange Act Release No. 13726 (July 8, 1977), 42 FR 36411 (July 14, 1977).

¹⁸ 15 U.S.C. 78f(b) (1), (6) and (7), 78f(d)(1) and 78s(d) (1988).

rules subject to this proposal to Rule 590 will enhance, rather than reduce, the Amex's enforcement capabilities regarding these rules in cases where initiation of a full disciplinary proceeding may be more costly and time consuming in view of the minor nature of the particular violation. In this regard, the Commission notes that the Amex retains the discretion to bring a full disciplinary proceeding for violations of the rules listed in Rule 590 and the Commission expects the Amex to do so when appropriate for the particular violation(s) involved, as for repeat or habitual offenders.

Finally, the Commission notes that the Amex proposes to establish a forum fee. The Commission believes it is reasonable to shift a portion of the costs associated with appeal proceedings to those members seeking review of a fine. The Commission believes that the imposition of the fee is reasonable because it is charged only on members who unsuccessfully appeal a fine and the fee serves as a vehicle for the Exchange to recoup a portion of its costs in processing appeals of minor disciplinary matters. Moreover, because the fee is relatively low, the Commission does not believe that the fee should deter members from appealing fines imposed pursuant to the Plan. The Commission, therefore, believes that the proposal appropriately balances the Exchange's interest in the efficient administration of its review proceedings with a member's interest in the fair and equitable resolution of a fine on appeal.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-Amex-92-11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-24514 Filed 10-5-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32988; File No. SR-NASD-93-15]

**Self-Regulatory Organizations;
National Association of Securities
Dealers, Inc.; Order Approving And
Notice of Filing and Order Granting
Accelerated Approval to Amendment
No. 1 to Proposed Rule Change
Relating to Listing Standards for
Hybrid Securities**

September 29, 1993.

On March 23, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt specific listing standards to accommodate hybrid securities products that are not otherwise covered under existing NASD listing criteria.

The proposed rule change appeared in the Federal Register on June 4, 1993.³ No comments were received on the proposed rule change. The NASD amended the proposal on September 24, 1993.⁴ This order approves the proposal as amended.

During the past several years, the NASD and the national securities exchanges have developed separate listing standards to accommodate innovative securities which are not readily categorized under traditional listing guidelines.⁵ These securities

¹ 15 U.S.C. 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1993).

³ See Securities Exchange Act Release No. 32378 (May 27, 1993), 58 FR 31770.

⁴ The NASD on September 24, 1993 filed Amendment No. 1 with the Commission to clarify the application of the Non-Quantitative Designation Criteria for NASDAQ/NMS securities in connection with the proposed hybrid listing standards. In particular, this amendment provides that an issuer of a hybrid securities product must be listed on NASDAQ/NMS or the NYSE or be an affiliate of a company listed on the NASDAQ/NMS or NYSE. In addition, Amendment No. 1 also provides the NASD with flexibility concerning the application of its corporate governance provisions to hybrid securities that are issued by sovereign entities. See letter from Thomas R. Gira, Senior Attorney, NASD, to Richard Zack, Branch Chief, Branch of Options Regulation, Division of Market Regulation, SEC, dated September 24, 1993 ("Amendment No. 1").

⁵ See Securities Exchange Act Release Nos. 27753 (March 1, 1990), 55 FR 8624 (March 8, 1990) (order approving File No. SR-Amex-89-29); 28217 (July 18, 1990), 55 FR 30056 (order approving File No. SR-NYSE-90-30); 29229 (May 23, 1991), 56 FR 24852 (order approving File No. SR-NYSE-91-05); 28528 (October 11, 1990), 55 FR 42114 (order approving File No. SR-CSE-90-11); 28662 (November 30, 1990), 55 FR 50428 (order approving File No. SR-CBOE-90-29); 30087 (December 17, 1991), 56 FR 66465 (order approving File No. SR-PSE-91-48); 30294 (January 27, 1992), 57 FR 4224 (order approving File No. SR-BSE-91-07; and

include: Common stock warrants, foreign currency warrants, index warrants, and special purpose securities not readily categorized as equity or debt. For example, in June 1992, the Commission approved amendments to the NASD's rules to accommodate the listing and trading of index warrants through the NASD Automated Quotation ("NASDAQ") system.⁶

Under the proposal, the NASD will designate as a NASDAQ/National Market System ("NMS") security any security not otherwise covered by the existing listing criteria, provided the issue of the hybrid security and the security offering meet certain requirements.⁷ The new criteria will apply to major issuers having assets of \$100 million and stockholders' equity of at least \$10 million. Additionally, issuers will be required to have had pre-tax income of at least \$750,000 and net income of at least \$400,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.⁸ Issuers not meeting the earnings criteria will be required to have assets in excess of \$200 million and stockholders' equity of \$10 million or, alternatively, assets in excess of \$100 million and stockholders' equity of \$20 million.

The NASD proposal would also require a minimum public distribution of 1,000,000 trading units with a minimum of 400 holders. When trading is expected to occur in larger than average trading units (i.e., \$1,000 principal amount), a minimum of 100 holders will be sufficient. The aggregate market value of issues listed under this proposal must be at least \$4 million.⁹ Moreover, an issuer of hybrid securities product must be a company in good standing with the NASD or the NYSE.¹⁰

30466 (March 11, 1992), 57 FR 9301 (order approving File No. SR-Phlx-92-01).

⁶ See Securities Exchange Act Release No. 30773 (June 3, 1992), 57 FR 24835.

⁷ Specifically, the proposed rule change adds paragraph (d) to Section 2 of Part III of Schedule D to the NASD's By-Laws regarding listing standards for hybrid securities products.

⁸ See Paragraph (a)(1) of Section 2 of Part III of Schedule D to the NASD's By-Laws.

⁹ The proposal also provides that the aggregate market value or principal amount of a hybrid security must be at least \$1 million in order for the security to remain eligible for designation as a NASDAQ/NMS security. This maintenance requirement is intended to help ensure that there is sufficient public float in a hybrid security to support trading in the security.

¹⁰ For example, if the issuer is listed on NASDAQ/NMS, the issuer must be a company in good standing with the NASD, meaning it must be in compliance with Sections 4 and 5 of Part III of Schedule D of the Association's By-Laws. Similarly, if the issuer is listed on the New York Stock Exchange, Inc. ("NYSE"), the issuer must be in good standing with the NYSE (i.e., Sections 102 and

¹⁹ 15 U.S.C. 78s(b)(2) (1988).

²⁰ 17 CFR 200.30-3(a)(12)(1991).

Under the proposal as amended, the issuer of a hybrid security designated pursuant to Section 2(d) of Part III of Schedule D to the By-Laws must be listed on NASDAQ/NMS or the NYSE or be an affiliate of a company listed on the NASDAQ/NMS or the NYSE.¹¹

Prior to the commencement of trading any of these hybrid securities, the NASD will evaluate the nature and complexity of the issue and, when appropriate, distribute a circular to the membership. This circular will provide guidance with regard to member firm compliance responsibilities when handling transactions in such securities.¹² In determining whether such a membership circular is necessary, the NASD will consider such characteristics of the issue as unit size and term; cash-settlement, exercise or call provisions; characteristics that may effect payment of dividends and/or appreciation potential; whether the securities are primarily of retail or institutional interest; and such other features of the issue that might entail special risks not normally associated with securities currently trading over the NASDAQ system. In addition, the NASD proposal also amends the Policy of the NASD's Board of Governors issued under Article III of the NASD's Rules of Fair Practice to highlight members' obligations to deal fairly with their customers when making recommendations or accepting

802 of the NYSE's Listed Company Manual). In addition, if the issuer is an affiliate of a company listed on NASDAQ/NMS or the NYSE, the affiliated company must be in good standing with the NASD or the NYSE. See Amendment No. 1 supra note 4.

¹¹ The NASD intends that issuers of hybrid securities be in full compliance with any corporate governance or responsibility requirements imposed by virtue of being designated a NASDAQ/NMS security or listed on the NYSE. Accordingly, the NASD amended its original proposal to provide that issuers of hybrid securities designated pursuant to Section 2(d) of Part III of Schedule D to the By-Laws must be listed on NASDAQ/NMS or the NYSE or be an affiliate of a company listed on NASDAQ/NMS or the NYSE. In addition, the NASD also proposed that Section 5 of Part III of Schedule D to the By-Laws (non-quantitative designation criteria for listing NMS securities) be applied to sovereign issuers of hybrid securities on a case-by-case basis (the amendment provides the NASD with the flexibility to determine, in consultation with the SEC, which corporate responsibility provisions should apply to the issuer). Section 5 provides that NASDAQ/NMS issuers must, among other things, distribute annual reports to shareholders, establish an audit committee (a majority of which shall be independent directors), hold annual shareholder meetings, and maintain at least two independent directors on its Board of Directors. See Amendment No. 1 supra note 4.

¹² The circular, if warranted, may address such matters as appropriate customer suitability standards or whether trading in the product is limited to options approved accounts in addition to highlighting any special risks of the product.

orders concerning new financial products.¹³

The proposed hybrid listing standard guidelines are not intended to accommodate the listing of securities that raise significant new regulatory issues and, therefore, would require a separate rule filing submitted pursuant to section 19(b) of the Act and Rule 19b-4 thereunder.¹⁴ Consistent with this approach for listing hybrid securities products, the NASD represents that it will consult with the Commission on a case-by-case basis concerning the appropriateness of designating a security as a NASDAQ/NMS security pursuant to proposed paragraph (d) of Section 2. The NASD believes that the proposed amendments to the listing standards will provide increased flexibility for issuers proposing to list innovative hybrid securities products that often possess attributes or features of more than one category of currently listed securities.

The Commission finds that the NASD's proposal to provide listing standards for new and innovative types of hybrid securities that cannot be categorized under the Association's existing listing standards is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 15A(b)(6).¹⁵ Specifically, the Commission believes that the proposal is consistent with the section 15A(b)(6) requirement that the rules of a registered securities association be designed to promote just and equitable principles of trade and not to permit unfair discrimination

¹³ In particular, the Board emphasizes the heightened obligations of members for fair dealing with customers when making recommendations or accepting orders for new financial products. As new products are introduced from time to time, it is important that members make every effort to familiarize themselves when each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding the products. Members are obligated to comply with specific guidelines, set forth by the NASD, for qualifying accounts to trade these products and for supervising the accounts thereafter.

¹⁴ The Commission notes that securities that have raised significant new regulatory issues have warranted a rule filing. See e.g., Debt Exchangeable for Common Stock ("DECS") [see Securities Exchange Act Release No. 32950 (September 23, 1993) (approval of file no SR-NYSE-93-32)]; Telecommunications Portfolio Market Index Target Term Securities ("MITTS") [see Securities Exchange Act Release No. 32840 (September 2, 1993), 58 FR 4785]; Equity Linked Notes ("ELNs") [see Securities Exchange Act Release No. 32343 (August 23, 1993), 58 FR 45140]; and Standard & Poor's Depository Receipts ("SPDRs") [see Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253].

¹⁵ 15 U.S.C. 78o-3(b)(6) (1982).

between customers, issuers, brokers, or dealers.

Over the past several years, the Commission has approved similar hybrid listing standards for the national securities exchanges to accommodate new products.¹⁶ The Commission believes that the NASD's proposal to establish listing criteria for new hybrid products addresses the special concerns raised by these new investment products. The proposed quantitative listing standards should ensure that only substantial companies capable of meeting their financial obligations are eligible to have their new products listed on the Exchange.¹⁷ This is an important consideration in light of the contingent financial obligations which may be created by these instruments, and should serve to protect investors by ensuring that the companies listing their new products have sufficient financial means to meet their settlement obligations. In addition, issuers are not permitted to forego their corporate governance responsibilities merely because the securities being issued are not traditional equity or debt.¹⁸

The Commission also finds that the dissemination of a membership circular (with advance notice and review by the Commission) as determined by the NASD on a case-by-case basis for hybrid securities will address additional sales practice concerns raised by such new products.¹⁹ These novel products, by combining features of debt, equity, and securities derivative products, may be more risky and complex than straight stock, bond, or equity products. The Commission believes, therefore, that the portion of the proposed rule change requiring the Exchange to evaluate the nature and complexity of each issue in order to determine whether to distribute a membership circular indicating member firm compliance responsibilities, prior to trading securities admitted to listing under

¹⁶ See supra note 5.

¹⁷ See supra notes 7 and 8 and accompanying text.

¹⁸ Specifically, the issuer of a hybrid security on NASDAQ/NMS must be either listed on NASDAQ/NMS or the NYSE in order to ensure full compliance with the corporate governance standards of the NASD under Section 5 of Part III of Schedule D. In addition, the NASD, in consultation with the SEC, will have limited discretion to forego corporate governance provisions in connection with hybrid securities issued by sovereign issuers. See Amendment No. 1 supra note 4.

¹⁹ The Commission expects, and the NASD has agreed, to provide a draft of the membership circular for the Commission's review prior to its dissemination to members. Telephone conversation between Thomas R. Gira, Senior Attorney, NASD, and Jeffrey P. Burns, Attorney, Branch of Options Regulation, Division of Market Regulation, SEC, on September 29, 1993.

section 2(d) of Part III of Schedule D to the NASD's By-Laws, will provide the NASD with the ability to address any potential sales practice problems and questions that may arise in connection with these new issues. Moreover, the Commission believes that the distribution of this circular should help to ensure that only customers with an understanding of the specific risks attendant to the trading of particular hybrid securities products trade these products.

The Commission believes that the proposed rule change is consistent with the requirements of section 15A(b)(6) of the Act because it relates only to those securities which are similar to products currently listed for trading by the Association. If a new product raises novel or significant regulatory issues, the NASD must then file a proposed rule change so that the Commission would have an opportunity to review the regulatory structure for the product.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because as discussed above, the NASD's proposal is similar to prior national securities exchange proposals approved by the Commission to provide listing criteria for hybrid securities.²⁰ The Commission did not receive any comments on this as well as any other hybrid listing standard proposals. Moreover, the amendment ensures that issuers of hybrid securities meet appropriate corporate governance standards. Accordingly, the Commission believes it is in the public interest to approve Amendment No. 1 on an accelerated basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-NASD-93-15) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-24486 Filed 10-5-93; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-32994; File No. SR-NYSE-92-37]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendment to Rule 13 (Definitions of Orders) to Permit Entry of a "Limit-at-the-Close Order"

September 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1992, as subsequently amended on September 8, 1993,¹ and on September 29, 1993,² the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Diana Luka-Hopson, Commission, dated September 3, 1993. Amendment No. 1 modifies these proposed procedures to conform the proposal with amendments to the auxiliary closing procedures which the Commission recently approved as part of an on-going pilot program for expiration days. See Securities Exchange Act Release No. 32868, (September 10, 1993) ("September 1993 Approval Order"). For a more complete description of the auxiliary closing procedures as amended on September 10, 1993, see notes 2 and 4 infra.

² See letter from Donald Siemer, NYSE, to Diana Luka-Hopson, Commission, dated September 29, 1993. Amendment No. 2 modifies the proposed procedures to conform the proposal with the recent extension of the NYSE's auxiliary closing procedures for "expiration Fridays" to "QIX expiration days." "Expiration Friday" refers to the trading day, usually the third Friday of the month, when some stock index futures, stock index options and options on stock index futures expire or settle concurrently. "QIX" expiration days are days on which end-of-calendar quarter index options expire. Amendment No. 2 provides that the term "expiration days" as used herein refers to expiration Fridays and QIX expiration days cumulatively. The auxiliary closing procedures for monthly expiration Fridays have been in place on a pilot basis since November, 1988. The pilot procedures have been extended each year since then. See Securities Exchange Act Release No. 26293 (November 17, 1988), 53 FR 47599; No. 26408 (December 29, 1988), 54 FR 343 (approving File No. SR-NYSE-88-37); No. 27448 (November 16, 1989), 54 FR 48343 (approving File No. SR-NYSE-89-38); No. 28564 (October 22, 1990), 55 FR 43427 (approving File No. SR-NYSE-90-49); No. 29871 (October 28, 1991), 56 FR 30004 (approving File No. SR-NYSE-91-31); Securities Exchange Act Release No. 31386 (October 20, 1992), 57 FR 52814 (order approving File No. SR-NYSE-92-30); and September 1993 Approval Order. *Id.* On March 30, 1993, the Commission approved a NYSE proposal to extend, on a pilot basis, the auxiliary closing procedures to QIX expiration days. See Securities Exchange Act Release No. 32066 (March 30, 1993), 58 FR 17630 (April 5, 1993).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend Exchange Rule 13 to provide that "limit-at-the-close" ("LOC") orders may be entered to offset published imbalances of "market-at-the-close" ("MOC") orders pursuant to such procedures as the Exchange may establish from time to time. The proposed rule change would be implemented on a 15 month pilot basis.³ It would permit LOC orders to be entered in the so-called expiration Friday pilot stocks plus any additional QIX pilot stocks (cumulatively, "LOC pilot stocks") on any day that an MOC imbalance of 50,000 shares or more is published by the Exchange.⁴ The Exchange intends to initiate the pilot using five of the LOC pilot stocks, which will be chosen on a basis of market activity and trading interest that suggests that LOC orders would be a useful investment vehicle. Under the proposal, LOC orders on expiration days would be irrevocable except in cases of legitimate error.⁵ As the Exchange gains experience with the use of LOC orders, the pilot will be expanded to other LOC pilot stocks.

³ See letter from Donald Siemer, Director, Rule Development, Market Surveillance, NYSE, to Diana Luka-Hopson, Branch Chief, Market Regulation, Commission, dated August 25, 1993.

⁴ Pursuant to the NYSE's MOC procedures, the NYSE publishes MOC order imbalances of 50,000 shares or more: (1) In the so-called expiration Friday "pilot stocks" on expiration Fridays; (2) in the "end-of-calendar quarter pilot stocks" on QIX expiration days; and (3) on all other trading days, in the expiration Friday pilot stocks, in any other stock being added to or replaced in a major index, and in any other stock when notified by a specialist that such an MOC imbalance exists and the dissemination is approved by a Floor Official. The expiration Friday pilot stocks are the 50 most highly capitalized Standard & Poor's ("S&P") 500 stocks and any component stocks of the Major Market Index that are not included in this group of 50. The end-of-calendar quarter pilot stocks are the fifty highest weighted S&P 500 stocks, any component stocks of the Major Market Index not included in this group, and the ten highest weighted stocks of the S&P MidCap 400 Index.

On expiration days, MOC order imbalances of 50,000 shares or more in the appropriate pilot stocks are published as soon as practicable after 3:40 p.m., and MOC orders may not be cancelled after 3:40 except in cases of legitimate error. See September 1993 Approval Order, *supra* note 1. On non-expiration days, MOC order imbalances of 50,000 are published as soon as practicable after 3:45 p.m. and there are no restrictions on the cancellation of MOC orders. See Securities Exchange Act Release No. 31291 (October 6, 1992) 57 FR 47149 (order approving File No. SR-NYSE-92-12).

⁵ See *supra* note 2.

²⁰ See *supra* note 5.

²¹ 15 U.S.C. 78s(b)(2) (1982).

²² 17 CFR 200.30-3(a)(12) (1993).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 13 to provide that LOC orders may be entered to offset published imbalances of MOC orders pursuant to such procedures regarding time of order entry and order cancellation as the Exchange may establish from time to time. The Exchange is proposing at the outset of the pilot to establish a 3:55 p.m. cut-off time for the entry of LOC orders, and to prohibit cancellations of LOC orders, except to correct a legitimate error, after 3:40 p.m. on expiration days. For all other trading days, cancellations of LOC orders (except to correct errors) would be prohibited after 3:55 p.m. As proposed, LOC orders would be orders entered for execution at the closing price, on the Exchange, of the stock named pursuant to such procedures as the Exchange may from time to time establish.

The Exchange proposes to implement the proposed rule change on a pilot basis for the LOC pilot stocks. The pilot will be initiated with five of these stocks to be selected based on a level of market activity and trading interest that suggests that LOC orders would be a useful investment vehicle. As the Exchange gains experience with the use of LOC orders, the pilot will be expanded to other LOC pilot stocks. The Exchange will modify its automated order routing system to accept the new LOC order type before initiating the pilot. The Exchange will notify the Commission when the pilot begins.

The procedures would provide that LOC orders in the stocks included in the pilot could be entered only to offset an imbalance of MOC orders as published on any trading day. The current imbalance publication procedures for MOC orders require that any MOC order

imbalance of 50,000 shares or more in one of the expiration Friday pilot stocks, or in the end-of-calendar quarter pilot stocks on QIX expiration days, will be published on the tape as soon as practicable after 3:40 p.m. and as soon as practicable after 3:45 p.m. for all other trading days. LOC orders would be irrevocable once entered on expiration days (except in cases of legitimate error).

LOC orders would be prioritized relative to other LOC orders by time of entry, but would go behind all other orders on the specialist's book at that price. LOC orders at the closing price would not be guaranteed an execution. They would be executed after conventional limit orders at that price and then executed according to time priority based on time of entry for all LOC orders at that price. LOC orders at a price that is better than the closing price would be guaranteed an execution (as are conventional limit orders at a better price than the closing price).

With respect to expiration Fridays, the Exchange believes that the pilot to permit the use of LOC orders on a limited basis as described herein should be viewed as an interim measure to help address the prospect of excess market volatility that may be associated with an imbalance of MOC orders at the close. The Exchange will continue to work with the Commission, its staff, other self-regulatory organizations, its member organizations and other key constituents to arrive at the most appropriate means to ensure that orders on expiration Fridays are executed in a way that maximizes public investor confidence in the fairness and orderliness of the NYSE market. Because of its concern that large imbalances of MOC orders may have a significant impact on closing prices, the Exchange continues to urge that the settlement of all derivative products should be based on opening prices so that pre-opening procedures on the NYSE may be followed, as required, to ensure that there is sufficient time to reach an appropriate pricing equilibrium.

2. Statutory Basis

The basis under the Act for this proposed rule change is section 6(b)(5), which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the *Federal Register* or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve the proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-92-37 and should be submitted by October 27, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-24513 Filed 10-5-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19745; 811-2078]

The Guardian Park Ave. Fund; Application for Deregistration

September 29, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Guardian Park Ave. Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 19, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 25, 1993, and should be accompanied by proof of service on Applicant, in the form of an affidavit, or, for lawyers, a certification of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 201 Park Avenue South, Mail Stop 9C, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, or Michael V. Wible, Special Counsel, at (202) 272-2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified, management investment company incorporated in Delaware in 1970 and reorganized as a

Massachusetts business trust in April 1989. On June 29, 1970, Applicant registered as an investment company pursuant to section 8(a) of the Act. On August 27, 1970, Applicant filed a registration statement pursuant to section 8(b) of the Act. On that same date, Applicant filed a registration statement under the Securities Act of 1933. Applicant's registration statement became effective on September 3, 1971 and Applicant's initial public offering of its shares commenced on June 1, 1972. Applicant's shares have also been sold to the following separate accounts of the Guardian Insurance and Annuity Company, Inc., which are registered under the Act as unit investment trusts: Guardian Variable Account I, Guardian Variable Account 2 and Guardian/Value Line Separate Account.

2. On October 8, 1992, Applicant's board of trustees approved an Agreement and Plan of Reorganization (the "Reorganization") between Applicant and the Park Avenue Portfolio (the "Portfolio"), a Massachusetts business trust that is registered as an open-end diversified management investment company and is authorized to issue its shares of beneficial interest in separate series. Proxy materials relating to the Reorganization were distributed to Applicant's shareholders on or about November 10, 1992. Applicant's shareholders approved the Reorganization at a special shareholders meeting on December 30, 1992.

3. Concurrently, the Portfolio's board of trustees, which is comprised of the same individuals as Applicant's board of trustees, voted to create and designate a new series (the "New Series") of the Portfolio named "The Guardian Park Avenue Fund," on behalf of which the Portfolio agreed to participate in the Reorganization.

4. By reason of their having a common investment adviser, and common directors and officers, Applicant and the Portfolio have been "affiliated persons" as that term is defined in the Act. Applicant relied on the rule 17a-8 exemption to comply with section 17(a) of the Act. Each of the boards of trustees of Applicant and the Portfolio unanimously determined that participation in the Reorganization by each of the Applicant and the Portfolio was in the best interests of the Applicant, the Portfolio, and their respective shareholders, and that the interests of the shareholders of the Applicant and the Portfolio, respectively, would not be diluted as a result of the Reorganization. Each board's findings, and the basis upon which they were made, were recorded

in the minutes of its meeting held on October 8, 1992.

5. Under the Reorganization, Applicant transferred its business and assets and assigned its liabilities to the New Series of the Portfolio, and the New Series acquired all such business and assets, assumed all such liabilities and issued to Applicant shares of beneficial interest of the New Series that was equivalent to and had an aggregate value equal to the shares of Applicant that were outstanding immediately prior to such transactions (i.e., 13,500,310.903 shares, having an aggregate net asset value of \$360,323,298 and a net asset value per share of \$26.69). Applicant then distributed the shares of the New Series it received to its shareholders of record at that time *pro rata* in exchange for their shares of the Applicant such that each shareholder received a number of shares of the New Series equal to the number of shares of the Applicant then held by each such shareholder, and Applicant was completely liquidated.

6. All expenses related to the reorganization, approximately \$9,000, were borne by Applicant's investment adviser, Guardian Investor Services Corporation.

7. Applicant has dissolved its existence under Massachusetts law by filing a Notice of Dissolution and Termination of Trust with the Office of the Massachusetts Secretary of State and the Clerk of the City of Boston.

8. As of the date of the application, Applicant had no assets or liabilities. Applicant has no shareholders and is not a party of any litigation or administrative proceeding. Applicant is not engaged in, and does not propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-24485 Filed 10-5-93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of

Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

DATES: September 23, 1993.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT:

Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the *Federal Register*, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on September 23, 1993:

DOT No: 3804

OMB No: New

Administration: Federal Aviation Administration

Title: Management Plan for Explosive Detection Systems Certification Testing

Need for Information: The Commission on Aviation Security and Terrorism presented a series of recommendations intended to improve the U.S. civil aviation security system which is administered by the FAA's Assistant Administrator for Civil Aviation Security. One of the recommendations was to undertake a

vigorous effort to marshal the necessary expertise to develop and test effective explosive detection systems (EDS). The FAA has prepared a management plan which outlines the framework for explosive detection systems certification testing. As required by the management plan, manufacturers seeking FAA certification for their candidate EDS must submit complete descriptive data and their test results to the FAA prior to receiving permission to ship their equipment to the FAA Technical Center for certification testing.

Proposed Use of Information: The FAA certification test team will review the qualification data package and a decision will be made whether to proceed with the certification process or to return the data package to the vendor. The primary objectives of the evaluation are to: (1) Ensure that the vendor has provided all data required by the instructions; and (2) verify that the vendor data substantiates that the EDS could meet the criteria.

Frequency: One time

Burden Estimate: 1,504 hours

Respondents: Manufacturers of explosive detection equipment

Form(s): None

Average Burden Hours Per Response: 752 hours reporting

DOT No: 3805

OMB No: 2120-0039

Administration: Federal Aviation Administration

Title: Air Carrier/Commercial Operators—FAR 135

Need for Information: FAR 135 prescribes rules designed to ensure passenger safety in the air carrier/commercial operator industry. These include requirements to obtain an operating certificate and operations specifications from the FAA.

Proposed Use of Information: The information collected on FAA Form 8000-6 will be used to certify FAR 135 operators and to monitor compliance with the regulations.

Frequency: On occasion

Burden Estimate: 347,772 hours

Respondents: FAR 135 operators

Form(s): FAA Form 8000-6

Average Burden Hours Per Response: 7 hours and 26 minutes reporting; 32 hours and 21 minutes recordkeeping

DOT No: 3806

OMB No: 2130-0519

Administration: Federal Railroad Administration

Title: Bad Order and Home Shop Card

Need for Information: Section 49 CFR part 215 requires each railroad to inspect freight cars and take the necessary remedial actions when

defects are found. When it is deemed necessary to move a defective car for repair purposes, a carrier is required to attach a bad order tag describing each defect to each side of the car.

Proposed Use of Information: The information will be used by Federal and certified State inspectors to determine if defective cars posing an immediate hazard are being moved in trains. In addition, the repair tag record is retained for 90 days to confirm that proper repairs were made at the designated location.

Frequency: On occasion

Burden Estimate: 8,000 hours

Respondents: Railroads

Form(s): None

Average Burden Hours Per Response: 20 hours recordkeeping

DOT No: 3807

OMB No: 2130-0530

Administration: Federal Railroad Administration

Title: Locomotive Engineers' Activities Diary

Need for Information: The FRA is researching the significance of various fatigue factors in human-error railroad accidents.

Proposed Use of Information: The information will be used to understand how scheduling practices affect sleep, circadian rhythms, and fatigue levels of locomotive crews and to recommend improvements in crew management procedures.

Frequency: One time

Burden Estimate: 1,177 hours

Respondents: Locomotive engineers

Form(s): None

Average Burden Hours Per Response: 2 hours and 21 minutes reporting

DOT No: 3808

OMB No: 2127-0518

Administration: National Highway Traffic Safety Administration

Title: 49 CFR 571.218, Motorcycle Helmets

Need for Information: Federal Motor Vehicle Safety Standard 218 requires motorcycle manufacturers to label helmets with the manufacturer's name, model, size, month and year of manufacturer, and the symbol DOT, constituting the manufacturer's certification that the helmet conforms to Federal safety standards.

Proposed Use of Information: The information will be used to identify manufacturers in case of defects and to inform the consumer that the helmet meets Federal safety standards.

Frequency: On occasion

Burden Estimate: 4,950 hours

Respondents: Businesses

Form(s): None

Average Burden Hours Per Response: 12 seconds

DOT No: 3809

OMB No: 2127-0045

Administration: National Highway Traffic Safety Administration

Title: 49 CFR Part 556, Petitions for Inconsequentiality

Need for Information: This regulation establishes procedures for manufacturers to petition NHTSA for an exemption from the notice and remedy requirements of the National Traffic and Motor Vehicle Safety Act due to the inconsequentiality of the defect or noncompliance as it relates to motor vehicle safety.

Proposed Use of Information: The information will be used by NHTSA to determine whether a defect or noncompliance should be treated as inconsequential.

Frequency: On occasion

Burden Estimate: 30 hours

Respondents: Businesses/organizations

Form(s): None

Average Burden Hours Per Response: 2 hours reporting

DOT No: 3810

OMB No: 2127-0547

Administration: National Highway Traffic Safety Administration

Title: 49 CFR Part 544—Insurer Reporting Requirements—Motor Vehicle Theft Law Enforcement Act of 1984

Need for Information: Section 615 of the Anti-Car Theft Act of 1992 requires insurance companies and rental/leasing companies to provide information to NHTSA on comprehensive insurance premiums charged by insurers of motor vehicles due to vehicle thefts and distribution of stolen vehicle parts.

Proposed Use of Information: The information will be used by NHTSA in exercising its statutory authority to help reduce comprehensive insurance premiums charged by insurers of motor vehicles due to motor vehicle theft.

Frequency: Annually

Burden Estimate: 180,380 hours

Respondents: Businesses/organizations

Form(s): None

Average Burden Hours Per Response: 60 hours reporting

DOT No: 3811

OMB No: New

Administration: U.S. Coast Guard
Title: Security for Passenger Vessels and Passenger Terminals

Need for Information: This information collection is needed by the Coast Guard to ensure that security standards for passenger vessels and passenger terminals making voyages

on the high seas of 24 hours or more are in place. The proposed security standards are necessary to deter or mitigate the results of terrorism and other unlawful acts against passenger vessels and passenger terminals.

Proposed Use of Information: This information will be used by the Coast Guard to evaluate the effectiveness of security measures on passenger vessels and passenger terminals. The security plan and its various components are critical to the Coast Guard's passenger vessel security strategy. This plan will outline measures passenger vessels or terminals will use to deter and respond to unlawful acts.

Frequency: On occasion

Burden Estimate: 155,124 hours

Respondents: Vessel and terminal operators

Form(s): None

Average Burden Hours Per Response: 26 hours reporting; 911 hours recordkeeping

DOT No: 3812

OMB No: New

Administration: U.S. Coast Guard
Title: Response Resource Inventory Data Collection

Need for Information: This information collection survey is needed by the Coast Guard to create and maintain a database on the amount and location of oil spill equipment that exist in the United States.

Proposed Use of Information: The data collected from this survey will be used by the Coast Guard to establish a centralized response equipment inventory database to: (1) Allow for better organization in case of an oil spill emergency; (2) decrease the amount of time needed to respond to a spill; and (3) allow oil spill response organizations to use this information for their contingency planning resources in the event of a coastal oil spill.

Frequency: On occasion

Burden Estimate: 1,491 hours

Respondents: Oil spill response organizations

Form(s): None

Average Burden Hours Per Response: 3 hours and 2 minutes reporting

DOT No: 3813

OMB No: New

Administration: U.S. Coast Guard
Title: Five-Year Term of Validity

Need for Information: This information collection is needed to ensure that merchant mariners who are applying for and/or renewing their licenses, certificates of registry (COR), and merchant mariner documents (MMD) are in compliance with the Oil Pollution Act of 1990.

Proposed Use of Information: This information collection will be used by the Coast Guard licensing officer to determine if the merchant mariner is qualified to receive or continue to hold a license, COR or MMD.

Frequency: Every 5 years

Burden Estimate: 77,490 hours

Respondents: Merchant mariners

Form(s): None

Average Burden Hours Per Response: 4 hours and 18 minutes reporting

DOT No: 3814

OMB No: 2115-0135

Administration: U.S. Coast Guard

Title: Display of Plans

Need for Information: This information collection is needed to ensure that certain categories of commercial vessels post or display specific emergency arrangement plans on board their vessels. The availability of this information is crucial in minimizing danger to those on board, damage to the vessel, and the safety of the port and the environment.

Proposed Use of Information: This information will be used by shipboard personnel during routine duty and by Coast Guard marine inspectors to help ensure all information is correct and up to date.

Frequency: On occasion

Burden Estimate: 447 hours

Respondents: Owners and operators of commercial vessels

Form(s): None

Average Burden Hours Per Response: 30 minutes recordkeeping

DOT No: 3815

OMB No: 2115-0563

Administration: U.S. Coast Guard
Title: Non-Destructive Testing Proposal and Results for Pressure Vessel Cargo Tanks on Unmanned Barges

Need for Information: This information collection is needed to ensure that cargo tanks on vessels that are 30 years or older, carrying liquid bulk dangerous cargo, are subjected to non-destructive testing at 10 year intervals as required by 46 U.S.C. 3703.

Proposed Use of Information: The results of the non-destructive test will be used by the Coast Guard to determine the condition and suitability of the tank for continued service.

Frequency: Every 10 years

Burden Estimate: 39 hours

Respondents: Barge owners

Form(s): None

Average Burden Hours Per Response: 13 hours reporting

DOT No: 3816

OMB No: 2115-0526

Administration: U.S. Coast Guard
Title: International Oil Pollution Prevention Certificate

Need for Information: This information collection is needed to ensure that ships who are engaged in international voyages are in compliance with the requirements of MARPOL 73/78 and the International Convention for the Prevention of Pollution from Ships.

Proposed Use of Information: This information collection will be used by Coast Guard inspectors to issue International Oil Pollution Prevention Certificates to those vessels in compliance with U.S. regulations and MARPOL 73/78.

Frequency: Every 4 or 5 years

Burden Estimate: 125 hours

Respondents: Shipowners/operators engaged in international voyages

Form(s): CG-5352, CG-5352A, CG-5352B

Average Burden Hours Per Response: 20 minutes reporting

DOT No: 3817

OMB No: 2115-0549

Administration: U.S. Coast Guard

Title: Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels

Need for Information: This information requirement is needed to ensure that passenger vessels that use liquefied propane gas and compressed natural gas cooking appliances have two placards posted on board containing the operating instructions and safety precautions in the use of the gas cooking appliance and gas system.

Proposed Use of Information: The information provided by the placards will be used by any person operating the cooking appliance and gas system to ensure it is being operated in a safe manner.

Frequency: On occasion

Burden Estimate: 1,425 hours

Respondents: Passenger vessel owners or operators

Form(s): None

Average Burden Hours Per Response: 1 hour reporting

DOT No: 3818

OMB No: 2115-0038

Administration: U.S. Coast Guard

Title: Private Aids to Navigation Application and Application for Class I Private Aids to Navigation on Artificial Island and Fixed Structures

Need for Information: This information collection is needed to ensure that owners of private aids mark their aids-to-navigation in accordance with current regulations. Coast Guard will also use this information to advise the public of new or changed private aids-to-navigation in their geographical location.

Proposed Use of Information: This information will be used by the Coast Guard to ensure that the private aid is adequately marked for navigational purposes. Once Coast Guard approves the location and characteristics of the private aid, this information will be disseminated to the public via radio broadcasts and nautical publications.

Frequency: On occasion

Burden Estimate: 3,054 hours

Respondents: Owners of private aids to navigation

Form(s): CG-2554, CG-4142

Average Burden Hours Per Response: 1 hour and 30 minutes reporting

DOT No: 3819

OMB No: 2115-0016

Administration: U.S. Coast Guard

Title: Characteristics of Liquid Chemicals Proposed for Bulk Water Movement

Need for Information: This information collection is needed to enforce the laws and regulations for the safe transportation of hazardous materials on board tank vessels.

Proposed Use of Information: Coast Guard will use this information to evaluate and determine the kind and degree of precaution which must be taken to protect the vessel, operating personnel and the general public who reside along the proposed route.

Frequency: On occasion

Burden Estimate: 300 hours

Respondents: Chemical manufacturers

Form(s): CG-4355

Average Burden Hours Per Response: 3 hours reporting

DOT No: 3820

OMB No: 2115-0010

Administration: U.S. Coast Guard

Title: Recreational Boating Accident Report

Need for Information: This information collection is needed by the Coast Guard to fulfill its statutory obligation in maintaining a national uniform marine casualty reporting system on recreational boating accidents.

Proposed Use of Information: Coast Guard will use the data collected from the reporting system to identify possible manufacturer defects in boats or equipment, develop boat manufacturer standards, develop safe boating education programs, and publish statistics on casualties.

Frequency: On occasion

Burden Estimate: 4,232 hours

Respondents: Operators of recreational boats

Form(s): CG-3865

Average Burden Hours Per Response: 35 minutes reporting

DOT No: 3821

OMB No: 2115-0007

Administration: U.S. Coast Guard
Title: Application for Vessel Inspection and Waiver

Need for Information: This information collection is needed to provide the Coast Guard with basic information necessary to plan and schedule inspections of U.S. vessels for certification. This requirement will also allow vessel owners and operators an opportunity to apply for a waiver from the inspection requirement based on national defense considerations.

Proposed Use of Information: This information will be used by the Coast Guard to schedule and plan vessel inspections and to analyze the waiver requests.

Frequency: On occasion

Burden Estimate: 1,703 hours

Respondents: Owners/operators of U.S. vessels

Form(s): CG-2633, CG-3752

Average Burden Hours Per Response: 15 minutes reporting

DOT No: 3822

OMB No: 2120-0008

Administration: Federal Aviation Administration

Title: Certification and Operations: Air Carriers and Commercial Operators of Large Aircraft

Need for Information: FAR Part 121 prescribes the terms, conditions, and limitations as are necessary to ensure safety in air transportation.

Proposed Use of Information: The information will be used by the FAA to determine if the operator is complying with the requirements of FAR Part 121, and operating in accordance with minimum safety standards.

Frequency: On occasion

Burden Estimate: 3,260,712 hours

Respondents: Air carriers and commercial operators

Form(s): FAA Form 8400-6, FAA Form 8070-1

Average Burden Hours Per Response: 3 hours and 42 minutes reporting

DOT No: 3823

OMB No: 2135-0003

Administration: Saint Lawrence Seaway Development Corporation

Title: Transit Declaration

Need for Information: A seaway transit declaration form is required by 33 CFR 401.74 to be forwarded to the SLSDC or the Seaway Authority of Canada by the representative of a vessel, other than a pleasure craft of not more than 350 tons, within 14 days after the vessel first enters the Seaway on any outbound or downbound voyage.

Proposed Use of Information: The information will be used by the U.S. and Canadian entities to assess toll charges and collection of cargo data.

Frequency: On occasion

Burden Estimate: 1,250 hours

Respondents: Shipping agents, individuals

Form(s): S/VM 429-01-80

Average Burden Hours Per Response: 30 minutes reporting

DOT No: 3824

OMB No: 2135-0002

Administration: Saint Lawrence Seaway Development Corporation

Title: Application for Vessel Preclearance

Need for Information: The information is required by 33 CFR 401.24 to ensure safe and efficient transit of both the U.S. and Canadian locks and to guaranty any tolls or charges incurred by the vessels.

Proposed Use of Information: The information will be used by the SLSDC to determine whether vessels are properly fitted in a manner to allow safe transit. The information provides insurance details to cover possible damage to Corporation facilities and indicates guaranty for payment of tolls or charges incurred by the vessel.

Frequency: On occasion

Burden Estimate: 1,000 hours

Respondents: Shipping agents

Form(s): S/VM 429-01-80

Average Burden Hours Per Response: 1 hour reporting

DOT No: 3825

OMB No: 2115-0557

Administration: U.S. Coast Guard

Title: Advance Notice of Vessel Arrival and Departure, Waivers from Advance Notice of Vessel Arrival and Departure

Need for Information: This information request is needed to ensure that certain vessels bound for ports or places in the U.S. give advance notices of their arrival and departure in accordance with the Ports and Waterways Safety Act.

Proposed Use of Information: This information requirement will be used by the Coast Guard Captain of the Port for: (1) Vessel traffic control; (2) denying entry to unsafe vessels; (3) targeting vessels for boarding and examination; (4) planning oil and hazardous substance spills; (5) counterterrorism, and firefighting contingencies; and (6) controlling the port entry of vessels which may constitute a threat to the safety or security of U.S. ports.

Frequency: On occasion

Burden Estimate: 52,475 hours

Respondents: Operators and vessel owners

Form(s): None

Average Burden Hours Per Response: 10 minutes reporting

DOT No: 3826

OMB No: 2120-0060

Administration: Federal Aviation Administration

Title: General Aviation and Air Taxi Activity and Avionics Survey

Need for Information: The FAA needs up-to-date information on the use and the characteristics of general aviation and air taxi aircraft.

Proposed Use of Information: The data will be used by the FAA to assess safety measures, to determine the economic impact of regulatory changes, and to formulate long-term programs and policies.

Frequency: Annually

Burden Estimate: 4,750 hours

Respondents: Sampling of general aviation aircraft operators

Form(s): FAA Form 1800-54

Average Burden Hours Per Response: 15 minutes reporting

DOT No: 3827

OMB No: 2106-0043

Administration: Office of the Secretary
Title: 14 CFR Part 215, Use and Change of Names of Air Carriers, Foreign Air Carriers, and Commuter Air Carriers

Need for Information: The information is needed to ensure that carriers do not advertise or operate in any name other than that for which they are authorized.

Proposed Use of Information: The information will enable DOT and the public to identify the specific carriers offering or operating services.

Frequency: As necessary

Burden Estimate: 355 hours

Respondents: U.S. certificated air carriers, U.S. commuter air carriers, foreign air carriers

Form(s): None

Average Burden Hours Per Response: 4 hours and 48 minutes reporting

DOT No: 3828

OMB No: 2115-0578

Administration: U.S. Coast Guard
Title: Various Forms and Posting Requirements under 46 CFR Subchapter T, "Small Passenger Vessels (under 100 gross tons)"

Need for Information: This information collection is needed to ensure that inspections of small passenger vessels are conducted for the safety of individuals and property on board. Reporting and posting requirements are necessary to ensure the safe operation of these vessels; and in case of an emergency, that proper procedures are followed.

Proposed Use of Information: The information will be used to ensure that the Coast Guard is made aware of significant maintenance or repair work done on small passenger vessels. Plan submissions are required for new and existing vessels that require significant modifications. Submittal of these plans will ensure that structure, arrangement, stability and outfitting are satisfactory for the intended service.

Frequency: On occasion

Burden Estimate: 417,092 hours

Respondents: Small passenger vessel owners

Form(s): CG-841, CG-854, CG-948, CG-949, CG-3752, CG-5256

Average Burden Hours Per Response: 8 minutes reporting; 5 hours and 6 minutes recordkeeping

DOT No: 3829

OMB No: New

Administration: U.S. Coast Guard

Title: Vessel Identification System (VIDS) Information Collection Requirements

Need for Information: This information is needed by the Coast Guard to meet statutory requirements of 46 U.S.C. Chapter 125, in establishing a national vessel identification system for recreational vessel owners.

Proposed Use of Information: This information collection will be used by the Coast Guard, law enforcement agencies (federal and local) and insurance companies for investigating vessel thefts and claims. It will also enable States, participating in VIDS, to give their lending institutions the capability to grant preferred mortgage status.

Frequency: Daily (automatic computer driven upload of data)

Burden Estimate: 2,057 hours

Respondents: State agencies participating in VIDS

Form(s): None

Average Burden Hours Per Response: 10 minutes reporting

DOT No: 3830

OMB No: 2138-0039

Administration: Research and Special Programs Administration
Title: Reporting Required for the International Civil Aviation Organization (ICAO)

Need for Information: As a member of the United Nations, the U.S. must fulfill its treaty obligations by supplying financial data to ICAO on U.S. carriers.

Proposed Use of Information: DOT acts as a conduit between U.S. air carriers (Groups II and III) and ICAO for supplying the U.S. portion of ICAO's worldwide aviation database. The

information will be used by airlines, manufacturers of aerospace products, airport authorities, trade associations and aviation consultants.

Frequency: Annual

Burden Estimate: 28 hours

Respondents: U.S. air carriers

Form(s): RSPA Form EF (supplemental)

Average Burden Hours Per Response: 18 minutes reporting

Issued in Washington, DC on September 23, 1993.

Cynthia C. Rand,

Director of Information, Resource Management.

[FR Doc. 93-24518 Filed 10-5-93; 8:45 am]

BILLING CODE 4910-62-P

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB-93-5) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before November 1, 1993 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Burlington Northern Railroad (BN) (Waiver Petition Docket Number PB-93-5)

The BN seeks a waiver of compliance with certain conditions of the Power Brakes and Drawbars Standards 49 CFR part 232 for six trains. BN is requesting the requirements for the 1,000 mile test and inspection, section 232.12(b), be waived on Train Numbers 001, 002, 003, 004, 011 and 012 operating daily in each direction between Chicago, Illinois, and Seattle, Washington. BN has collected data on these trains since June 1, 1992, and feel that the failure and repair statistics show that operation from initial terminal to destination without intermediate tests does not undermine safety. The railroad proposes a 3 month test on the 6 trains, during which time they will continue to inspect the trains at Havre, Montana, and Minneapolis, Minnesota. Trains found to have defects at these locations would be handled as follows:

1. Cars found with unsafe safety standards will be repaired, those safe to move will be taken to destination as outlined in 49 CFR 215.9.
2. Safety appliances will be repaired.
3. Cars with air brakes cut-out enroute or those found inoperative will be recorded and left in the train. Cars will be repaired after they have been unloaded. At no time will a train be allowed to leave the intermediate terminal with less than 85 percent of the trains air brakes operative.

BN states that Association of American Railroads tests conducted in 1982 and 1985 showed that brake systems do not deteriorate in 1,000 miles to the degree that an inspection is necessary. These tests indicated trains could operate 5,000 miles before deterioration began. Since the time of the AAR tests, a number of improvements have been made in train brake systems such as stabilized control valves, mandatory automatic slack adjusters on all new and rebuilt cars and an improved single car test required on all cars when on a repair track. These all contribute to a more reliable brake system.

Waccamaw Coast Line Railroad Company (WCLR) (Waiver Petition Docket Number RSGM 93-18)

The WCLR seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards 49 CFR part 223 for one locomotive. The WCLR recently purchased an EMD Model F-7A locomotive from Canadian National

Railroad. The locomotive will be used primarily on excursion/dinner trains between Conway and Myrtle Beach, South Carolina. The railroad has previously been granted waivers from part 223 for two locomotives under Docket Number RSGM-91-8. The railroad states there has never been vandalism relating to glazing.

Dakota Southern Railway Company (DSRC) (Waiver Petition Docket Number RSGM 93-20)

The DSRC seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards 49 CFR part 223 for 1 locomotive and 1 caboose. The DSRC was previously granted waiver RSGM 89-26 for 7 locomotives operating on their approximately 187 miles of track in rural south central South Dakota. There have been no incidents of vandalism since the railroad began operations in 1987. The railroad states that the cost of installing FRA certified glazing would be a financial burden.

Issued in Washington, DC on September 30, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93-24530 Filed 10-5-93; 8:45 am]

BILLING CODE 4910-08-P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 29, 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.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0079

Form Numbers: ATF F 1534(500.8)

Type of Review: Extension

Title: Power of Attorney

Description: ATF F 1534(5000.8)

delegates the authority to a specific individual to sign documents on behalf of an applicant or principal. 26

U.S.C. 6061 authorizes that individuals signing returns, statements or other documents required to be filed by industry members, under the provisions of the Internal Revenue Code or the Federal Alcohol Administration Act are to have that authority on file with ATF

Respondents: Individual or households, Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 5,000

Estimated Burden Hours Per

Respondent: 18 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 3,000 hours

OMB Number: 1512-0492

Form Numbers: ATF REC 5000/24

Type of Review: Extension

Title: Alcohol, Tobacco and Firearms Tax Returns, Claims and Related Documents

Description: ATF Form 5000.24 is completed by persons who owe tax on distilled spirits, beer, wine, cigars, cigarettes, cigarette papers and tubes, snuff, and smoking tobacco (pipe). The return is prescribed by law for the collection of these taxes. ATF uses the form to identify the taxpayer, the premises and period covered by the tax return, taxpayer's ability, and adjustments affecting the amount paid

Respondents: Individual or households, State or local governments, businesses or other for-profit, small businesses or organizations

Estimated Number of Respondents: 506,189

Estimated Burden Hours Per

Respondent: 1 hour

Frequency of Response: Other

Estimated Total Reporting Burden: 1 hour

Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93-24526 Filed 10-5-93; 8:45 am]

BILLING CODE 4810-31-P

Public Information Collection Requirements Submitted to OMB for Review

September 29, 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: 1515-0041

Form Number: CF 6509B

Type of Review: Extension

Title: U.S. Customs Declaration

Description: The CF 6059B facilitates the clearance of persons and their goods upon arrival in the territory of the United States by requiring basic information necessary to determine Customs exception states and if any duties or taxes are due. The form is also used for the enforcement of Customs and other Federal agencies laws and regulations

Respondents: Individuals or households, small businesses or organizations

Estimated Number of Respondents: 39,000,000

Estimated Burden Hours Per

Respondent: 3 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 1,950,000 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. 93-24527 Filed 10-5-93; 8:45 am]

BILLING CODE: 4820-02-P

Customs Service

[T.D. 93-81]

Approval of Marine Chemist Service, Inc., as a Customs Commercial Gauger and Accredited Laboratory

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the approval of Marine Chemist Service, Inc., as a Customs approved commercial gauger, and as a

accredited laboratory to perform certain petroleum and organic chemical analyses.

SUMMARY: Marine Chemist Service, Inc. has been given Customs gauger approval and laboratory accreditations under § 151.13 of the Customs Regulations (19 CFR 151.13). Specifically, the Norfolk, VA site is approved to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oil; and is accredited to perform the following tests: API Gravity, sediment and water, water by distillation, sediment by extraction, distillation characteristics, Reid vapor pressure, Saybolt universal viscosity and percent weight of sulfur. The Newport News, VA site is accredited to perform the following tests: Xylene content of mixed xylenes, percent composition by weight of benzene, toluene and xylenes, percent by weight of lead and identification and percent composition by weight of organic chemicals.

SUPPLEMENTARY INFORMATION: Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Marine Chemist Service, Inc., with facilities in Newport News, Virginia and Norfolk, Virginia, has applied to Customs for commercial gauger approval and for certain laboratory accreditations. Customs has determined that Marine Chemist Service, Inc. meets all the requirements for approval as a commercial gauger and accredited laboratory.

Therefore, in accordance with § 151.13(f) of the Customs Regulations, Marine Chemist Service, Inc.'s Norfolk, VA site is approved to gauge the products named above in all Customs districts; and the Norfolk, VA and the Newport News, VA sites are accredited to perform the laboratory analyses listed above.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, DC 20229 (202) 927-1060.

Dated: September 29, 1993.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 93-24561 Filed 10-5-93; 8:45 am]

BILLING CODE 4820-02-P

[T.D. 93-80]

Testing of Pressed and Toughened (Specially Tempered) Glassware**AGENCY:** Customs Service, Department of the Treasury.**ACTION:** Notice on the testing of pressed and toughened (specially tempered) glassware.

SUMMARY: Customs has completed a review of the comments submitted by interested parties on the testing of certain articles of glass to ascertain if they have been "pressed and toughened (specially tempered)." These articles are normally imported under Item numbers 7013.29.05, 7013.32.10, 7013.39.10, and 7013.99.20 of the Harmonized Tariff Schedule of the United States (HTSUS). **FOR FURTHER INFORMATION CONTACT:** Mr. Robert L. Zimmerman, Jr., Office of Laboratories & Scientific Services, (202) 927-1060.

SUPPLEMENTARY INFORMATION:**Background**

The U.S. Customs Service published a request for comments on a proposed method for the testing of "pressed and toughened (specially tempered)" glassware in the *Federal Register* (Vol. 58, No. 106, June 4, 1993). These articles are normally imported under Subheading numbers 7013.29.05, 7013.32.10, 7013.39.10, and 7013.99.20 of the Harmonized Tariff Schedule of the United States (HTSUS). The notice contained a description of a proposed method. Articles of "safety glass, consisting of toughened (tempered) * * * glass" normally imported under Heading 7007 of the HTSUS, e.g., architectural plate glass, vehicle windshields, were not within the purview of the notice. The U.S. Customs Service received responses from four interested parties as a result of the June 4, 1993, Notice. The issues discussed in these responses will be addressed herein.

Issue 1—Use of polarized light to determine tempering. Due to the nature of this test, it can only be conducted on transparent and translucent articles. Three respondents endorsed this part of the test. However, two of the three placed qualifications on their endorsement. The remaining respondent stated that the stresses imparted to an article due to tempering are visible through a polariscope, but the respondent offered no specific recommendation on the test.

The qualifications placed on the method were:

(1) The polariscope test should be the only test, and

(2) The test is only useful for qualitative purposes to disqualify the article if none of, or only a part of, the sample is found to be tempered. The respondent goes on to state "[o]nly with an accurate determination of the magnitude of tempering is it possible to determine if the item in question is tempered or 'specially tempered.' All items, opaque or transparent, should be subjected to the more rigorous center punch test."

The first qualification is found to be non-persuasive since the polariscope test will determine that an article is tempered, but it will not determine that the article has been toughened. The courts have stated that the purpose of the tempering process is to impart a measure of durability to the article. Therefore a meaningful test for durability is necessary. The test for durability (or toughness) is the thermal shock test.

Regarding the second qualification, Customs agrees, as stated above, that the polarized light alone is insufficient to classify an article as "toughened (specially tempered)". However, the best test for durability, i.e., "magnitude of tempering" is not the center punch test; it is the thermal shock test. The center punch test is discussed further in Issue 3.

Customs finds that the use of polarized light to determine that a transparent or a translucent article has been full-surface tempered is accurate and will remain a part of the overall test method.

Issue 2—Thermal Shock test. Three of the four respondents agreed that the change in the parameters of the thermal shock test are warranted. As stated above, the dissenting respondent recommends that, for transparent and translucent glass, only the polariscope test is necessary. This issue was discussed above. It is the general opinion of both Customs and the other three respondents that the new parameters will make the thermal shock test more meaningful.

During the course of the development of this method, several alternatives have been offered concerning the thermal shock test parameters. Various temperature differentials have been suggested, e.g., 105 °C, 135 °C, 145 °C. The concept of having various temperature differentials depending on the object, i.e., 105 °C for stemware and tumblers and 120 °C for tableware and ovenware, has been proffered. Over the course of the development of this method, several recommended temperature differentials have been considered by Customs. These differentials have been both above and

below the 135 °C differential currently stated in the method. After reviewing the technical data made available through the responses to the several *Federal Register* Notices and from Customs own in-house experimentation, Customs believes that a single differential of 135 °C is best for the purpose of determining that a glass article has been made "durable" for tariff purposes. This differential is simple to use and is acceptable by the majority of those involved with the development of this method.

Therefore, Customs has found the respondents who suggested parameters other than a 135 °C temperature difference to be nonpersuasive. The 135 °C thermal difference parameter will be adopted.

Issue 3—The Center Punch Test. (Ascertaining that the toughness, i.e., durability, imparted to the article is due to "specially tempering" the article). Four (4) points of discussion were raised: (1) Again the basic question of keeping or deleting the center punch test, (2) the interpretation of the results, (3) the substitution of a polarized light test for this test for transparent and translucent articles, and (4) the substitution of a diamond blade saw test for opaque articles for the center punch test. Two respondents recommended deleting the test, one endorsed the test, and the remaining respondent offered no specific opinion as to the disposition of the test.

As stated in the May 4, 1992, *Federal Register* Notice: "To prove that an article has been toughened is not sufficient to satisfy the conditions set forth in the HTSUS. A test is necessary to demonstrate that it has been toughened via a tempering process. As the courts have stated, the purpose for tempering the glassware is to make it more durable. In other words, a sufficient degree of stress must have been imparted to the glassware via a tempering process to make it durable. Customs believes that if the article passes both the thermal shock test for durability and exhibits evidence that it has been tempered, then the article can be described as 'toughened (specially tempered)' for Customs purposes."

For transparent and translucent glassware, Customs (as stated above) has confirmed that the polarized light method is sufficient to determine that an article has been tempered. Therefore the Center Punch Test for transparent and translucent glassware is discontinued as of the publication of this Notice.

Regarding the interpretation of the results of the Center Punch test that may have to remain in use for opaque ware,

Customs agrees that this exercise is, at best, subjective. This is the primary reason Customs have been seeking an alternate method for determining that an article has been tempered. One respondent has proposed the use of a Cutting Test using a diamond-rimmed, circular saw blade in lieu of the Center Punch test. This respondent claims that: " * * * cutting opaque glassware with a diamond-rimmed disk saw will immediately show whether the article has been tempered. If an article saws cleanly in half (in two pieces), it has not been tempered. A tempered article will almost immediately fracture into a number of jagged pieces when placed under the saw."

Customs has conducted some preliminary experiments using a diamond-rimmed saw blade. This work has produced encouraging results. For this reason Customs is proposing replacing the Center Punch test for opaque glassware with the following test procedure for opaque glassware. It should be stated that Customs plans to subject only opaque articles to the Cutting Test.

Cutting Test for Opaque Glassware

I. Apparatus

D. Tile Saw (or Similar Table Mounted Circular Saw)

A tile saw having a cutting head which can be adjusted laterally and vertically and which is equipped with an 8 to 12 inch diameter diamond-rimmed blade designed for wet cutting is adequate for testing glassware articles

III. Analysis Procedures

E. Cutting Test for Opaque Glassware

- Adjust the cutting head of the tile saw vertically and laterally, as necessary, to accommodate the glassware article.
- Be sure that the water supply to both sides of the diamond-rimmed blade is adequate.
- Turn on the saw.
- While holding or otherwise securing the glassware article to prevent twisting and binding during the cutting, slowly move the article into contact with the blade.
- Proceed with the cutting.
- Interpretation of the Cutting Test for Opaque Glassware: Annealed (non-tempered) glassware will readily accept the diamond-rimmed blade and will be easily and cleanly cut in half should you proceed that far with the cutting. Tempered glassware, on the other hand, will almost immediately break into pieces when cut. Breakage occurs as the forces applied by the cutting blade

overcome the compressive stress that was locked into the article's surface during the tempering process.

Conclusion

Effective as of the date of publication of this Notice in the **Federal Register**, Customs will conduct the analysis of transparent and translucent glassware, falling under the purview of the aforementioned HTSUS item numbers, using the 3 following procedures: Macroscopic Analysis, Polariscopic Examination and Thermal Shock Test. These procedures were published at FR 31786 (Volume 58, No. 106), on June 4, 1993.

In addition, Customs is seeking comments from interested parties on the Cutting Test for Opaque Glassware. Comments should be submitted within 30 days of the date of publication of this Notice. During the 30 day response period, Customs will continue its assessment of the cutting test. Immediately upon the close of the response period, Customs will evaluate the submissions and the data from its tests and publish an updated method for opaque glassware.

Dated: September 30, 1993.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 93-24562 Filed 10-5-93; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System of Records

AGENCY: Department of Veterans Affairs.
ACTION: Notice; publication of notice of amendment of routine use.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is considering amending the system of records entitled "Patient Medical Records—VA" (24 VA 136) which is set forth on pages 938-942 of the **Federal Register** publication, "Privacy Act Issuances," 1991 Comp., Volume II; and amended at 57 FR 28003, June 23, 1992; 57 FR 45419, October 1, 1992; and 58 FR 29853, May 24, 1993.

DATES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use amendment to the Secretary of Veterans Affairs (271A), 810 Vermont Avenue, NW, Washington, DC 20420. All relevant material received before November 5, 1993, will be considered.

All written comments received will be available for public inspection only in room 170 of the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until November 15, 1993. If no comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by VA, the routine use amendment in this system is effective September 24, 1993.

FOR FURTHER INFORMATION CONTACT:

Celia Winter, Program Specialist, Medical Administration Service (161B), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 535-7437.

SUPPLEMENTARY INFORMATION:

On October 1, 1992 (57 FR 45419) routine use number 39 was proposed to the system of records, "Patient Medical Records" (24 VA 136). The purpose of the routine use was to permit the disclosure of individual identifiers for nonservice-connected veterans to other Federal agencies for income verification. The routine use, as published, specifies the social security number of "veterans and the dependents of veterans." Since the spouse of a veteran is not always a dependent of the veteran, the "spouse of the veteran" is specifically added to the routine use in this amendment. The social security number of the veteran's spouse is required for the veteran's eligibility determination and income verification because the spouse's income is included in the veteran's gross family income.

Approved: September 24, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

Notice of System of Records

In the system identified as 24 VA 136, "Patient Medical Records—VA" appearing on pages 938-942 of the **Federal Register** publication, "Privacy Act Issuances," 1991 Comp., Volume II; and amended at 57 FR 28003, June 23, 1992; 57 FR 45419, October 1, 1992; and 58 FR 29853, May 24, 1993, the following routine use is amended:

24 VA 136

SYSTEM NAME:

Patient Medical Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

39. Identifying information, including social security number, concerning veterans, spouse(s) of veterans, and the dependent(s) of veterans, may be

disclosed to other Federal agencies for purposes of conducting computer matches to obtain information to determine or verify eligibility of certain veterans who are receiving medical care under Title 38, U.S.C.

* * * * *

[FR Doc. 93-24490 Filed 10-5-93; 8:45 am]

BILLING CODE 8320-01-M

The Enhanced-Use Development of the VAMC West Palm Beach, Fl

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation.

SUMMARY: The Secretary of the Department of Veterans Affairs is

designating the West Palm Beach, FL Veterans Affairs Medical Center for an Enhanced-Use development. The Department intends to enter into a long-term lease of real property with the City of Riviera Beach. The city will construct and operate a public safety facility on the site, and will, as consideration for the lease, provide specified facilities and services to the Department at no cost.

FOR FURTHER INFORMATION CONTACT:

Jacob Galloway, Office of Asset and Enterprise Development (089), 810 Vermont Avenue NW., Washington, DC, 20420, (202) 535-8556.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.* specifically provides that

the Secretary may enter into an enhanced-use lease, if the Secretary determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property. This project meets these requirements.

Approved: September 21, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 93-24489 Filed 10-5-93; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 192

Wednesday, October 6, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, October 19, 1993.

PLACE: 2033 K St., NW., Washington, DC, Lower Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

- Prohibition on Insider Trading, final rule 1.59
- Quarterly review, 4th quarter, FY 1993

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-24652 Filed 10-4-93; 11:50 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, October 19, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, (202) 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-24653 Filed 10-4-93; 11:50 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:45 a.m., Tuesday, October 19, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Review of Enforcement Activities.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-24654 Filed 10-4-93; 11:50 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, October 19, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-24655 Filed 10-4-93; 11:50 am]

BILLING CODE 6351-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 7, 1993.

LOCATION: Room 440, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Architectural Glazing Petition, CP 92-1

The staff will brief the Commission on petition CP 92-1 from O'Keeffe, Inc. requesting the Commission to extend the coverage of the Architectural Glazing Standard by removing the current exemption for wired glass used in "fire doors" and by revising the scope of the standard to include ceramic glass substitutes.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504-0800.

Dated: September 30, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93-24692 Filed 10-4-93; 2:49 pm]

BILLING CODE 6355-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-93-31]

TIME AND DATE: 2:00 p.m., October 14, 1993.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731-TA-642 (Final) (Ferrosilicon from Egypt)—briefing and vote.
5. Outstanding action jackets: None

In accordance with Commission policy, subject matter listed above, not

disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: October 1, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-24712 Filed 10-4-93; 2:50 pm]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2 p.m. (Eastern Time) October 19, 1993.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes
2. Report to the Commission: Office of Legal Counsel
3. Enforcement Guidance on Coverage of Federal Reserve Banks
4. Enforcement Guidance on the Extraterritorial Application of, and Coverage of Foreign Employers Under Title VII and the Americans with Disabilities Act
5. Enforcement Guidance on the Effect of Section 112 of the Civil Rights Act of 1991 on the Supreme Court Decision in *Lorance v. AT&T Technologies, Inc.* and Charges Involving Seniority Systems.

Closed Session

1. Litigation Authorization: General Counsel Recommendations
2. Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the *Federal Register*, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 663-7100 (voice) and (202) 663-4077 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-4070.

Dated: October 4, 1993.
Frances M. Hart,
Executive Officer, Executive Secretariat.
[FR Doc. 93-24738 Filed 10-4-93; 3:58 pm]
BILLING CODE 6750-06-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, October 12, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street

entrance between 20th and 21st Streets, NW., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the

Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 4, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 93-24737 Filed 10-4-93; 3:57 pm]
BILLING CODE 6210-01-P

Corrections

Federal Register

Vol. 58, No. 192

Wednesday, October 6, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

September 17, 1993, in the third column, in the second full paragraph, in (1), in the first line, "Vally" should read "Valley".

BILLING CODE 1505-01-D

August 30, 1993, make the following correction:

§ 574.9 [Corrected]

On page 45428, in the first column, in § 574.9(a)(5)(i)(B), in the third line, "a pt" should read "a prompt".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 91

[Airspace Docket No. 91-AWA-3]
RIN 2120-AE-16Alteration of the Denver Class B
Airspace Area; CO

Correction

In rule document 93-22796 beginning on page 48722 in the issue of Friday,

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 574

[93-87]

RIN 1550-AA36

Agency Disapproval of Directors and
Senior Executive Officers of Savings
Associations and Savings and Loan
Holding Companies

Correction

In rule document 93-20688 beginning on page 45421 in the issue of Monday,

Federal Register

Wednesday
October 6, 1993

Part II

Department of Health and Human Services-

Food and Drug Administration

21 CFR Parts 812 and 813
Investigational Device Exemptions;
Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 812 and 813

[Docket No. 91N-0292]

Investigational Device Exemptions; Intraocular Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to remove the regulations on investigational exemptions for intraocular lenses (IOL's). An IOL is an implant intended to surgically replace the natural lens of the human eye. FDA believes that it is no longer necessary to maintain particularized regulations on IOL investigations because approved IOL's are now widely available and investigations of IOL's can be conducted under the investigational device regulations applicable to medical devices generally. Because the investigational IOL regulations to be removed contain provisions for disqualification of clinical investigators and because disqualification provisions are needed for device investigations generally, elsewhere in this issue of the *Federal Register* FDA is proposing procedures for disqualification of clinical investigators for inclusion in the current general investigational device regulations.

DATES: Written comments by December 6, 1993. FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its publication in the *Federal Register*.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-4765.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has two regulations on investigational use of medical devices. Part 812 (21 CFR part 812) covers investigational devices generally and part 813 (21 CFR part 813) applies only to IOL's. The existence of a separate regulation for investigational use of

IOL's is due to provisions of the Medical Device Amendments of 1976 (1976 amendments) (Pub. L. 94-295) that addressed IOL's.

In the *Federal Register* of April 6, 1976 (41 FR 14570), IOL's were deemed to be new drugs and subject to investigational drug requirements. This action was taken in an effort to control the incidence of reported complications associated with IOL use, such as endothelial corneal dystrophy, dislocation, uveitis and material degradation. Prior to this announcement, there was no oversight of clinical use of IOL's by FDA.

Subsequent to this announcement, the 1976 amendments to the Federal Food, Drug, and Cosmetic Act (the act) were enacted on May 28, 1976. Under section 520(1)(3)(D)(iii) of the act (21 U.S.C. 360j(1)(3)(D)(iii)), (Transitional Provisions for Devices Considered as New Drugs or Antibiotic Drugs), a device which FDA previously declared to be a new drug in a *Federal Register* notice after March 31, 1976, was subject to two new provisions: (1) The device required an approved premarket approval application (PMA) or investigational device exemption (IDE) 18 months after the May 28, 1976, enactment date; (2) during the time between the enactment date and IDE or PMA approval, FDA could restrict the interim use of such devices to qualified physicians in accordance with section 520(g) of the act, Exemptions for Devices for Investigational Use. If the devices were restricted under section 520(g), the Act provided that the requirements would be made applicable "in such a manner that the device shall be made reasonably available to physicians meeting appropriate qualifications prescribed by the Secretary." As required by the 1976 amendments, FDA published in the *Federal Register* of August 20, 1976 (41 FR 35282), proposed IDE regulations that would have applied to all medical devices, including IOL's. Comments received on the proposal persuaded FDA of the need to extend the comment period on the proposed IDE regulations. However, due to concerns over IOL safety, and due to Congress' intent that FDA make IOL's subject to investigational device controls promptly, the Commissioner of Food and Drugs (the Commissioner) decided to take immediate action to "assure that these lenses are shipped and used only in accordance with appropriate investigational controls" (42 FR 58874, November 11, 1977). Accordingly, in the *Federal Register* of November 11, 1977, FDA promulgated a final rule on IDE requirements for IOL's (42 FR 58874).

The preamble to this regulation stated that:

When the general investigational device regulations are published in final form and become effective, the Commissioner will rescind those portions of these regulations applicable to investigational studies of intraocular lenses that are adequately covered by the general regulations (42 FR 58876).

FDA published the final IDE regulations applicable to medical devices generally on January 18, 1980 (45 FR 3732), and announced its decision not to revoke the IOL regulations at that time because sponsors, investigators, institutional review boards (IRB's), and FDA were thoroughly familiar with part 813. "Subjecting IOL investigators to a new part 812 (21 CFR part 812) rather than to part 813 would not afford greater protection than now exists and could disrupt ongoing investigations" (45 FR 3732 at 3739). Thus, FDA issued part 812 and retained part 813.

To ensure that IOL's were reasonably available, FDA permitted sponsors of IOL's to conduct "adjunct" studies which permitted much broader use of investigational IOL's than is permitted with other investigational devices. FDA began phasing out adjunct studies in 1986, when it concluded that enough models of IOL's had been approved to ensure that IOL's were reasonably available (Ref. 1). Adjunct studies were completely phased out by 1990. By eliminating the adjunct phase of IOL studies, FDA encouraged earlier completion of investigations, earlier submission of PMA's, and reduced size of clinical investigations. With the elimination of the adjunct phase of IOL studies, investigations of IOL's no longer have this distinguishing characteristic that may once have justified separate regulatory treatment. FDA has now approved over 1,000 IOL models.

In light of the fact that investigational IOL no longer need disparate treatment, FDA has reexamined the need to retain part 813 and has concluded that maintaining a regulatory distinction between the IOL studies and other medical device studies is no longer justified. It is true that the IOL regulations contain some provisions that are not reflected in the IDE regulations. For example, the application for investigational device exemption under § 813.20 requires certain information not generally required in part 812, such as a more detailed description of the ingredients, properties, and operation of the device. Also, the investigational plan required under part 813 requires the submission of more information

than part 812. However, the agency believes that these and other differences are relatively insignificant because the agency will continue to demand high quality submissions, complete information, and ethical and professional conduct of sponsors and investigators sufficient to justify the granting and continuance of an IDE. With respect to IDE submissions for IOL's, FDA expects that submissions will continue to include essentially the same information now required specifically under part 813.

The dual regulatory schemes under parts 812 and 813 have common goals: (1) To encourage medical device research and development; and (2) to protect the rights, safety, and welfare of human subjects. The research community, including investigators and IRB's, and FDA have acquired greater familiarity and experience using and implementing the IDE regulations. The agency believes that the continued existence of similar, but not identical, regulatory requirements is unnecessary and occasionally confusing.

FDA emphasizes that requiring IOL studies to comply with part 812 does not lessen human subject protection because informed consent by subjects is, and would continue to be, governed by 21 CFR part 50. Furthermore, the role of the IRB under part 813 is similar to that of an IRB under part 56 (21 CFR part 56). Also, the agency attempts, to the extent possible, for its regulations governing clinical investigations of FDA-regulated products (e.g., drugs, biologics, and devices) to be consistent under the bioresearch monitoring regulations. Because part 813 contains provisions for IRB's that are slightly different from part 56, revocation of part 813 would support FDA's objective of uniform regulation of investigational products. Part 56 contains the general regulations that FDA promulgated on this subject (46 FR 8958 at 8975, January 27, 1981).

Thus, to eliminate confusion within the clinical research community and to provide uniformity to investigational device studies, FDA is proposing to remove the IOL regulations in their entirety; and to remove § 812.2(c)(8) to exempt IOL's from part 812 when the IOL is the subject of an approved PMA under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e).

The IOL regulations include provisions for the disqualification of clinical investigators. Similar provisions do not currently exist in part 812. In 1980, when the agency promulgated the IOL regulations, FDA expected to finalize an agency wide proposed rule

on clinical investigator disqualification, which appeared in the *Federal Register* of August 8, 1978 (43 FR 35186). That document would have applied to all investigational device studies. However, a general final rule on clinical investigator disqualification was never published, although FDA did incorporate many provisions of the August 8, 1978, proposal into its regulations on investigational drugs (43 FR 35186) (52 FR 8798, March 19, 1987). FDA is now carrying out its original intent to have in place clinical investigator disqualification procedures for investigational devices generally. Elsewhere in this issue of the *Federal Register*, FDA is proposing provisions for the disqualification of clinical investigators under part 812.

II. Economic Impact

This proposal would remove existing regulations on investigational exemptions for IOL's. Investigations of IOL's can be conducted under the IDE regulations in part 812 applicable to medical devices generally. FDA believes there will be no increased costs to IOL sponsors and investigators to comply with part 812 rather than part 813. The requirements are essentially the same, although the IOL regulations contain some provisions not reflected in the IDE regulations. FDA expects, therefore, that submissions for IOL's will continue to include essentially the same information now required specifically under part 813 and therefore that there will be no change in costs. The benefits of this action are that it will further implement FDA's plan for consistent bioresearch monitoring regulations for all FDA regulated products, and will result in a single regulation for investigational exemptions for medical devices, rather than two similar regulations which may be unnecessarily confusing. These benefits cannot be quantified in monetary terms. Therefore, FDA certifies that this proposed rule requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96-354).

III. Comments

Interested persons may, on or before December 6, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office

above between 9 a.m. and 4 p.m., Monday through Friday.

IV. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Report on IOL Adjunct Study, Office of Device Evaluation, Center for Devices and Radiological Health, FDA, December 1986.

List of Subjects

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 813

Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that chapter I of title 21 of the Code of Federal Regulations, be amended in 21 CFR parts 812 and 813 as follows:

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

1. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513-522, 530-542, 701, 702, 704, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c-360l, 360gg-360ss, 371, 372, 374, 376, 381); secs. 215, 301, 351 of the Public Health Service Act (41 U.S.C. 216, 241, 262).

§ 812.2 [Amended]

2. Section 812.2 *Applicability* is amended by removing paragraph (c)(8).

PART 813—[REMOVED AND RESERVED]

3. Part 813, consisting of §§ 813.1 through 813.170, is removed and reserved.

Dated: September 29, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-24474 Filed 10-5-93; 8:45 am]

BILLING CODE 4180-01-F

21 CFR Part 812**[Docket No. 92N-0308]****Investigational Device Exemptions;
Disqualification of Clinical
Investigators****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its medical device regulations to include provisions for the disqualification of clinical investigators. The agency is proposing this change to further implement its plan for consistent bioresearch monitoring regulations for all products regulated by FDA and to improve the remedies available to deal with clinical investigator misconduct.

DATES: Written comments by November 5, 1993. FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its publication in the *Federal Register*.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20859, 301-594-4765.

SUPPLEMENTARY INFORMATION:**I. Background**

FDA has long intended to have a clinical investigator disqualification procedure available for medical device investigations. Although the investigational device exemption (IDE) regulations (21 CFR part 812) allow regulatory action against a study sponsor due to a noncompliant investigator, such as terminating the sponsor's IDE or imposing additional restrictions under the IDE, the IDE regulations do not expressly provide for clinical investigator disqualification. The proposed IDE regulation, published in the *Federal Register* of August 20, 1976 (41 FR 35282 at 35311), contained disqualification provisions for clinical investigators in proposed § 812.119 that were not included in the final IDE regulation published on January 18, 1980 (45 FR 3749), that applies to device investigations generally. Disqualification provisions were included, however, in part 813 (21 CFR part 813) on investigational exemptions for intraocular lenses § 813.119 (42 FR 58889, November 11, 1977). The

preamble to the final IDE regulation, published in the *Federal Register* of January 18, 1980 (45 FR 3732 at 3749), noted that proposed § 812.119 was being deleted and would be addressed in FDA's final agency-wide regulations on the obligations of clinical investigators, which had been proposed in the *Federal Register* of August 8, 1978 (43 FR 35186).

FDA believes that amending part 812 to include provisions for investigator disqualification would further the agency's overall plan to implement consistent bioresearch monitoring regulations for all products regulated by FDA and would give FDA an additional regulatory tool to deal with violations by investigators with the IDE regulations. This tool has been a useful part of the regulatory program for investigational new drugs for 30 years and is currently set forth in 21 CFR 312.70.

FDA's general intent is that its regulations on clinical investigations be compatible with the Department of Health and Human Services' regulations and FDA's bioresearch monitoring program, including its rules on protection of human subjects (part 50 (21 CFR part 50)); standards for institutional review boards (part 56 (21 CFR part 56)); and good laboratory practices for nonclinical laboratory studies (part 58 (21 CFR part 58)). Part 50 became a final rule in 1980 (45 FR 36390, May 30, 1980); part 56 became a final rule in 1981 (46 FR 8975, January 27, 1981); and part 58 became a final rule in 1978 (43 FR 60013, December 22, 1978). The agency also issued a proposed rule in the *Federal Register* of September 27, 1977 (42 FR 49612), on obligations of sponsors and monitors, which, among other things, proposed new part 52. Instead of publishing a final rule, the agency decided to issue in the *Federal Register* of February 17, 1988 (53 FR 4723), a guideline on monitoring. Also, as mentioned above, in the *Federal Register* of August 8, 1978 (43 FR 35186), FDA proposed regulations on obligations of clinical investigators of FDA regulated products generally and included selected provisions of proposed part 54, which is applicable only to drugs, in the investigational new drug applications final rule (known as the IND rewrite) that was published in the *Federal Register* of March 19, 1987 (52 FR 8798).

Because the agency intends to make its regulations governing clinical investigations consistent, and because the IDE rule in part 812 does not provide for disqualification of clinical investigators, FDA is now proposing to

amend part 812 to include such provisions. This remedy will give the agency an effective means of dealing with individual violations of the IDE regulations in a more focused manner. At present, FDA's principal remedies in cases of clinical investigator misconduct are termination of the IDE, imposition of restrictions under the IDE, or bringing administrative or judicial enforcement actions. Disqualification of a noncompliant investigator will often be a more suitable remedy for some forms of misconduct.

This proposed rule is an extension of existing § 813.119, which applies to investigations of intraocular lenses, to all clinical investigations under the IDE regulations. FDA believes that the proposed regulation is substantively consistent with the regulation governing disqualification of clinical investigators of investigational new drugs (§ 312.70), even though the proposed regulation follows the format of the existing intraocular lens clinical investigator disqualification regulation (§ 813.119). FDA believes it more appropriate to follow the existing device regulation format for these regulations. FDA invites comments, however, on whether the regulations for drugs and devices should be identical, or virtually identical. FDA is giving notice that, if comments persuade the agency to revise the proposed rule to follow § 312.70 precisely or closely, e.g., due to familiarity with § 312.70 among investigators and industry, the agency may issue a final rule that parallels § 312.70. FDA is, therefore, keenly interested in comments on this issue.

II. Discussion of Proposed Amendments

The proposed amendments to part 812 consist of disqualification provisions similar to those contained in § 813.119. This proposal consists of the following provisions:

A. Purposes

Proposed § 812.119(a) identifies the purposes of disqualification of an investigator who has violated the regulations, which are to: (1) Preclude the investigator from conducting clinical investigations subject to requirements under the Federal Food, Drug, and Cosmetic Act (the act) for prior submission to FDA, until such time as it becomes likely that he will abide by such regulations or that such violations will not recur; and (2) exclude the consideration of any clinical investigations which have been conducted in whole or in part by the investigator, in support of applications for an investigational exemption or for premarket approval from FDA, until

such time as it becomes likely that he will abide by the regulations (unless it can be adequately demonstrated that such violations did not occur during or affect the validity or acceptability of a particular investigation). However, the determination that a clinical investigation may not be considered in support of an application for exemption or premarket approval does not relieve the applicant for such an application of any obligation under any other applicable regulation to submit the results of the investigation to FDA.

B. Grounds for Disqualification

Proposed § 812.119(b) establishes that the Commissioner of Food and Drugs (the Commissioner) may disqualify an investigator upon finding that the investigator caused false information to be submitted to FDA, or to the sponsor of a study with the understanding that information may be submitted to FDA, or: (1) That the investigator violated any of the regulations set forth in part 812; and (2) that the violation or violations adversely affected the integrity of the clinical investigation, the rights of the human subjects, and/or the safety of the subjects.

C. Informal Conference or Written Explanation

Proposed § 812.119(c) provides the investigator with an opportunity to respond to notification from FDA which states that there are grounds which, in the agency's opinion, may justify disqualification of the investigator. The investigator may respond to the notice at an informal conference or in writing. The written notice to the investigator will specify a time period within which the investigator should respond.

If FDA accepts the investigator's explanation for his noncompliance with the regulations, the disqualification process will be terminated and the investigator will be notified in writing of this decision. If the investigator's explanation for the noncompliance is not accepted by the agency, FDA will inform the investigator in writing of the reason for the nonacceptance.

D. Notice of and Opportunity for a Hearing on Proposed Disqualification

Proposed § 812.119(d) provides that, whenever the Commissioner has information indicating that grounds exist which may justify disqualification of an investigator, and the investigator has failed to offer an acceptable explanation for the noncompliance, the Commissioner may issue to the investigator a written notice proposing that the investigator be disqualified. An

opportunity for a hearing automatically attaches.

E. Offer of Consent Agreement

Proposed § 812.119(e) provides the investigator with an opportunity to enter into a consent agreement with FDA in lieu of completing the disqualification proceeding.

F. Hearing and Final Order on Disqualification

Proposed § 812.119(f) provides the mechanisms by which a hearing and final order will be conducted. A hearing on the disqualification of an investigator is to be conducted in accordance with the requirements for a regulatory hearing as set forth in 21 CFR part 16.

If the Commissioner, after a regulatory hearing, or if a hearing has been waived, makes the findings required for disqualification required by proposed § 812.119, the Commissioner will issue a final order disqualifying the investigator. The order shall include a statement of the basis for that determination and shall prescribe any actions to be taken with regard to ongoing regulated clinical investigations being conducted by the investigator. The Commissioner will also notify (with a copy of the order) the investigator of the action, as well as the sponsor of each clinical investigation subject to requirements for prior submission to FDA that was or is being conducted by the investigator.

Alternatively, if the Commissioner determines not to make the findings required for disqualification, the Commissioner shall issue a final order terminating the disqualification proceedings. This order shall, likewise, include a statement of the basis for that determination. Upon issuing a final order, the Commissioner shall notify the investigator and provide a copy of the order.

G. Actions Upon Disqualification

Proposed § 812.119(g) explains what effect disqualification has upon the clinical investigations conducted by an investigator. It states that no clinical investigation subject to a requirement for prior submission to FDA will be authorized by the agency if the investigation is to be conducted, in whole or part, by a disqualified investigator.

As for ongoing clinical investigations being performed by the investigator, the Commissioner must consider the nature of the study, the number of subjects involved, the risks to the subjects from suspension of the investigation, and the need for involvement of an acceptable investigator. Based upon this

information, the Commissioner may direct, in the final order disqualifying an investigator, that one or more of the following actions be taken for each such clinical investigation:

(1) The clinical investigation may be terminated or suspended in its entirety unless the investigator is reinstated under proposed § 812.119 or another investigator accepts responsibility for the clinical investigation.

(2) No new subject shall be allowed to participate or be asked to participate in the investigation unless the investigator is reinstated or another investigator accepts responsibility for the clinical investigation.

(3) Any human subject who has previously been allowed to participate in the investigation and who remains under the supervision of the investigator, but who is no longer receiving the test device or having it used involving him or her (i.e., a person having followup monitoring by the investigator, or acting as a control), shall continue to be monitored by the investigator, but the human subject shall not receive another device, or have it used involving him or her, until the investigator is reinstated or another investigator accepts responsibility for the clinical investigation.

(4) Any human subject who has been allowed to participate in the investigation and who, but for suspension of the clinical investigation, would continue to receive the device or have it used involving him or her, may not receive it or have it used until the investigator is reinstated or another investigator accepts responsibility for the clinical investigation; unless the disqualified investigator states in writing that it is contrary to the health of the subject to discontinue use of the test device until the investigator is reinstated or another investigator can assume responsibility for the clinical investigation. In this latter case, FDA may impose any further conditions that the Commissioner considers appropriate to protect the rights and safety of the subjects.

(5) A subject may continue to receive or use the test device for the time period and under the conditions specified by the Commissioner in the final order disqualifying an investigator without a written request from the investigator whenever the Commissioner determines that discontinuing further use until the investigator is reinstated or another investigator can assume responsibility for the clinical investigation would create a life-threatening problem.

With regard to other clinical investigations conducted by the disqualified investigator, any

investigation done by an investigator before or after disqualification may be presumed by FDA to be unacceptable. Each application for an investigation exemption or for premarket approval, whether approved or not, containing or relying upon any clinical investigation performed by the investigator may be examined to determine whether the investigation was or would be essential to a regulatory decision regarding the application. If it is determined that the investigation was or would be essential, FDA will also determine whether the investigation is acceptable notwithstanding the disqualification of the investigator. The person relying on the investigation may be required to establish that the clinical investigation was not affected by the circumstances which led to disqualification of the investigator, e.g., by submitting validating information. If the clinical investigation is determined to be unacceptable, it will be eliminated from consideration in support of the application, and this elimination may serve as new information justifying the termination or withdrawal of approval of the application.

Furthermore, no clinical investigation begun by an investigator after the date of his disqualification will be considered in support of any application for an exemption or premarket approval application (PMA), except a clinical investigation begun by an investigator after he or she has been reinstated. The determination that a clinical investigation may not be considered in support of an application for an exemption or PMA does not, however, relieve the applicant of any obligation under any other applicable statute or regulation to submit the results of the clinical investigation to FDA.

H. Public Disclosure of Information Regarding Disqualification or a Consent Agreement

Proposed § 812.119(h) provides that, upon issuance of a final order disqualifying an investigator or upon entry of a consent agreement, FDA may notify all or any interested persons. This notice may be given whenever the agency, in its discretion, believes that the notice would further the public interest or would promote compliance with the regulations set forth in part 812, or other laws applicable to the conduct of clinical investigations or investigators. This notice, if given, will include a copy of the consent agreement or final order issued. The notice with respect to a consent agreement will state that the investigator has agreed to certain restrictions involving clinical

investigations. The notice with respect to disqualification will state that the disqualification constitutes a determination by the Commissioner that the investigator is not eligible to conduct clinical investigations subject to the requirements for prior submission to FDA, and that the results of any clinical investigations conducted by the clinical investigator may not be considered by FDA in support of any application for an exemption or PMA. Any notice issued under proposed § 812.119 will further state that it is given because of the professional relations between the investigator and the person notified, and FDA is not advising that any action be taken by the person notified.

A determination that an investigator has been disqualified and the administrative record for the determination are available to the public upon request, subject to the provisions in part 20 (21 CFR part 20). A consent agreement under proposed § 812.119(e) is available to the public upon request.

Furthermore, whenever FDA has reason to believe that an investigator may be subject to disqualification, the agency may, in its discretion, so notify the sponsor of any ongoing clinical investigation in which that investigator is participating. This notification will occur simultaneously with or subsequent to the agency's proposal to disqualify the investigator, unless safety considerations warrant earlier notification of the sponsor.

I. Alternative or Additional Actions to Disqualification or a Consent Agreement

Proposed § 812.119(i) explains that disqualification of an investigator under subpart E of part 812 would be independent of, and neither in place of, nor a precondition to, other proceedings or actions authorized by the act. FDA may, at any time, through the Department of Justice, institute any appropriate judicial proceedings (civil or criminal) and any other appropriate regulatory action, in addition to or in place of, and prior to, simultaneously with, or subsequent to, disqualification. The agency may also refer pertinent matters to another Federal, State, or local government agency for such action as that agency determines to be appropriate.

J. Suspension or Termination of an Investigator by a Sponsor

Proposed § 812.119(j) provides that the sponsor of an investigational study may at any time remove an investigator from further participation in the study, whether or not FDA has begun any action to disqualify the investigator. The

sponsor need not use either the grounds or the procedures for disqualification set forth in subpart E of part 812. If a sponsor removes an investigator from a study, the sponsor shall notify FDA in writing and, where the removal is due to noncompliance with the regulations, give the reasons for such removal as soon as possible, but in no event later than 15 days after such removal.

K. Reinstatement of a Disqualified Investigator

Proposed § 812.119(k) establishes the requirements of investigator reinstatement. An investigator who has been disqualified may be reinstated as eligible to conduct clinical investigations subject to requirements for prior submission to FDA, or as acceptable to be the source of clinical investigations to be submitted to FDA, if the Commissioner determines, upon an evaluation of a written submission from the investigator, that the investigator can adequately assure that he will conduct such studies in compliance with the regulations.

A guideline for the reinstatement of any disqualified investigator is available upon request from the Health Assessment Policy Staff (HFY-20), Office of Health Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

A disqualified investigator who wishes to be reinstated must present in writing to the Commissioner reasons why he or she believes he or she should be reinstated and a detailed description of the corrective actions the investigator has taken or intends to take to assure that the acts or omissions that led to the disqualification will not occur. The Commissioner may condition reinstatement upon the submission of an acceptable protocol for a specific clinical investigation providing for additional corrective actions or special undertakings by a sponsor, an institution, an institutional review committee, or another investigator to review in detail the investigator's compliance with agency requirements, or the investigator's being found in compliance with the applicable FDA regulations upon an inspection.

If an investigator is reinstated, the Commissioner will notify the investigator and all persons who were notified of the disqualification of the investigator. A determination that an investigator has been reinstated is disclosable to the public under part 20.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or

cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

The potential costs of this proposed rule are those that are to be incurred from compliance with requirements for reporting to the agency by the affected clinical investigators and sponsors, and are estimated to be \$12,250 annually. This amount includes the estimated annual reporting burden of 75 hours (see section V. of this document) charged at an average annual salary of \$30 per hour per person (clerical and professional salaries combined). No more than 10 such responses, costing no more than \$1,000 each in time and resources, are expected annually. The estimate of \$12,250 also includes the potential cost of responding to the agency's written notice of clinical investigator noncompliance, through informal conference or written

explanation (see § 812.119(c)). This proposed rule specifies the procedures to be followed for the disqualification of noncompliant clinical investigators where this is necessary to protect the integrity of a clinical investigation or the rights or safety of human subjects. These potential benefits of the rule to the public health cannot be quantified in monetary terms.

The agency does not anticipate any other significant additional costs of compliance. Therefore, FDA certifies that this proposed rule requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96-354).

V. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondents of the information collections are shown

below with an estimate of the periodic reporting burden.

Title: Investigational Device Exemptions; Disqualification of Clinical Investigators; NPRM.

Description: The Food and Drug Administration (FDA) is proposing to revise its medical device regulations to include provisions for the disqualification of clinical investigators. The agency is proposing this change to further implement its plan for uniform bioresearch monitoring regulations for all products regulated by FDA and to improve the remedies available to deal with clinical investigator misconduct. Because the agency intends to make its regulations governing clinical investigations consistent, and because the investigational device exemption rule in part 812 does not provide for disqualification of clinical investigators, FDA is now proposing to amend part 812 to include such provisions.

Description of Respondents: Businesses and small businesses and organizations.

Estimated Annual Burden for Reporting

21 CFR Section	Number of Respondents	Number Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Burden Hours
812.119(g)(2)(iv)(B)	3	1	3	5	15
812.119(j)	10	1	10	1	10
812.119(k)	5	1	5	10	50
Total Annual Burden Hours:					75

As required by the Paperwork Reduction Act, FDA is submitting to OMB a request that it approve these information collection requirements. Organizations or individuals desiring to submit comments for consideration by OMB on these information collection requirements should address them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3003, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

VI. Comments

Interested parties may, on or before December 6, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 812 be amended as follows:

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

1. The authority citation for 21 CFR part 812 is revised to read as follows:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513-522, 530-542, 701, 702, 704, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c-360l, 360gg-360ss, 371, 372, 374, 376, 381); secs. 215, 301, 351 of the Public Health Service Act (42 U.S.C. 216, 241, 262).

2. New § 812.119 is added to subpart E to read as follows:

§ 812.119 Disqualification of Investigators.

(a) *Purposes.* The purpose(s) of disqualification of an investigator who has failed to comply with any of the regulations set forth in this part, or other regulations in this chapter governing the conduct of investigators, may be one or both of the following:

(1) To preclude the investigator from conducting clinical investigations subject to requirements under the act for prior submission to FDA until it becomes likely that the investigator will abide by the regulations or that the violations will not recur. The determination to disqualify an investigator does not necessarily constitute a finding or recommendation that the investigator is not qualified to practice or teach medicine or should be subject to other sanctions by other persons such as licensing boards or employers.

(2) To preclude the consideration of any clinical investigations in support of applications for an investigational exemption or for premarket approval from FDA, which investigations have

been conducted in whole or in part by the investigator, until it becomes likely that the investigator will abide by the regulations or that the violations will not recur or that it can be adequately demonstrated that such violations did not occur during or affect the validity or acceptability of a particular investigation or investigations. The determination by FDA that a clinical investigation may not be considered in support of an application for exemption or premarket approval does not, however, relieve the applicant for such an application of any obligation under any other applicable regulation to submit the results of the investigation to FDA.

(b) *Grounds for disqualification.* The Commissioner of Food and Drugs (the Commissioner) may disqualify an investigator upon finding that:

(1) The investigator caused false information to be submitted to FDA, or to the sponsor of a study with the understanding that information may be submitted to FDA; or

(2) The investigator failed to comply with any of the regulations set forth in this part or other regulations in this chapter regarding the conduct of investigators; and

(3) The noncompliance materially affected the integrity of the clinical investigation, the rights of the human subjects, and/or the safety of the subjects.

(c) *Informal conference or written explanation.* (1) Whenever FDA has information indicating that grounds exist under this part which in the agency's opinion may justify disqualification of an investigator, FDA shall issue to the investigator a written notice describing the noncompliance and offer to the investigator an opportunity to respond to the notice at an informal conference or in writing. The written notice to the investigator will specify a time period within which the investigator should respond.

(2) If the investigator offers an explanation for the noncompliance, either by written communication or at an informal conference that is accepted by FDA, the disqualification process will be terminated and the investigator will be notified in writing of this decision.

(3) If the investigator offers an explanation for the noncompliance that is not accepted by the agency, FDA will inform the investigator in writing of the reason for the nonacceptance.

(d) *Notice of and opportunity for a hearing on proposed disqualification.* Whenever the investigator has failed to either offer an acceptable explanation for the noncompliance stated in the

written notice under paragraph (c) of this section, or to otherwise respond to the notice, and the Commissioner determines that grounds exist under paragraph (b) of this section which, in the Commissioner's opinion, may justify disqualification of an investigator, the Commissioner may issue to the investigator a written notice proposing that the investigator be disqualified.

(e) *Offer of consent agreement.* The notice for an informal conference or to offer a written explanation under paragraph (c) of this section, or the notice of opportunity for a hearing under paragraph (d) of this section, or both, may offer the investigator an opportunity to enter into a consent agreement with FDA in lieu of completing the disqualification proceeding.

(f) *Hearing and final order on disqualification.* (1) A hearing on the disqualification of an investigator shall be conducted in accordance with the requirements for a regulatory hearing as set forth in part 16 of this chapter.

(2) If the Commissioner, after the regulatory hearing or after the time for requesting a hearing expires without a request being made, upon an evaluation of the administrative record of the disqualification proceeding, makes the findings required in paragraph (b) of this section, the Commissioner shall issue a final order disqualifying the investigator. The order shall include a statement of the basis for that determination and shall prescribe any actions (set forth in paragraph (g) of this section) to be taken with regard to ongoing regulated clinical investigations being conducted by the investigator. Upon issuing a final order, the Commissioner shall notify (with a copy of the order) the investigator of the action, as well as sponsor of each clinical investigation subject to requirements for prior submission to FDA that was or is being conducted by the investigator.

(3) If the Commissioner, after a regulatory hearing or after the time for requesting a hearing expires without a request being made, upon an evaluation of the administrative record of the disqualification proceeding, determines not to make the findings required in paragraph (b) of this section, the Commissioner shall issue a final order terminating the disqualification proceedings. This order shall include a statement of the basis for that determination. Upon issuing a final order, the Commissioner shall notify the investigator and provide a copy of the order.

(g) *Actions upon disqualification.* (1) No clinical investigation subject to a

requirement for prior submission to FDA will be authorized by the agency if the investigation is to be conducted, in whole or part, by a disqualified investigator.

(2) The Commissioner, after considering the nature of each ongoing clinical investigation subject to a requirement for prior submission to FDA that is being performed by the investigator, the number of subjects involved, the risks to the subjects from suspension of the investigation, and the need for involvement of an acceptable investigator, may direct, in the final order disqualifying an investigator under paragraph (f)(2) of this section, that one or more of the following actions be taken for each such clinical investigation:

(i) The clinical investigation may be terminated or suspended in its entirety unless the investigator is reinstated under paragraph (k) of this section or another investigator accepts responsibility for the clinical investigation.

(ii) No new subject shall be allowed to participate or be asked to participate in the investigation unless the investigator is reinstated under paragraph (k) of this section, or another investigator accepts responsibility for the clinical investigation.

(iii) Any human subject who has previously been allowed to participate in the investigation and who remains under the supervision of the investigator, but who is no longer receiving the test device or having it used involving him or her (i.e., one having followup monitoring by the investigator, or one acting as a control), shall continue to be monitored by the investigator, but the human subject shall not receive another device, or have it used involving him or her, until the investigator is reinstated under paragraph (k) of this section or another investigator accepts responsibility for the clinical investigation.

(iv) Any human subject who has been allowed to participate in the investigation and who, but for suspension of the clinical investigation, would continue to receive the device or have it used involving him or her, may not receive it or have it used until either:

(A) The investigator is reinstated under paragraph (k) of this section or another investigator accepts responsibility for the clinical investigation; or

(B) The disqualified investigator states in writing that it is contrary to the health of the subject to discontinue use of the test device until the investigator is reinstated under paragraph (k) of this

section or another investigator can assume responsibility for the clinical investigation. In such a case, FDA may impose any further conditions that the Commissioner considers appropriate to protect the rights and safety of the subjects.

(v) A subject may continue to receive or use the test device for the time period and under the conditions specified by the Commissioner in the final order disqualifying an investigator without a written request from the investigator whenever the Commissioner determines that discontinuing further use until the investigator is reinstated under paragraph (k) of this section or another investigator can assume responsibility for the clinical investigation would create a life-threatening problem.

(3) Once an investigator has been disqualified, each application for an investigation exemption or for premarket approval, whether approved or not, containing or relying upon any clinical investigation performed by the investigator may be examined to determine whether the investigation was or would be essential to a regulatory decision regarding the application. If it is determined that the investigation was or would be essential, FDA will also determine whether the investigation is acceptable notwithstanding the disqualification of the investigator. Any investigation done by an investigator before or after disqualification may be presumed to be unacceptable, and the person relying on the investigation may be required to establish that the clinical investigation was not affected by the circumstances which led to disqualification of the investigator, e.g., by submitting validating information. If the clinical investigation is determined to be unacceptable, it will be eliminated from consideration in support of the application, and this elimination may serve as new information justifying the termination or withdrawal of approval of the application.

(4) No clinical investigation begun by an investigator after the date of his disqualification will be considered in support of any application for an exemption or premarket approval application (PMA), except a clinical investigation begun by an investigator after he or she has been reinstated under paragraph (k) of this section. The determination that a clinical investigation may not be considered in support of an application for an exemption or PMA does not, however, relieve the applicant of any obligation under any other applicable statute or regulation to submit the results of the clinical investigation to FDA.

(h) *Public disclosure of information regarding disqualification or a consent agreement.* (1) Upon issuance of a final order disqualifying an investigator or upon entry of a consent agreement as described in paragraph (e) of this section, FDA may notify all or any interested persons. This notice may be given whenever the agency, in its discretion, believes that the notice would further the public interest or would promote compliance with the regulations set forth in this part or other laws applicable to the conduct of clinical investigations or investigators. This notice, if given, will include a copy of the consent agreement or final order issued under this part. The notice with respect to a consent agreement will state that the investigator has agreed to certain restrictions involving clinical investigations. The notice with respect to disqualification will state that the disqualification constitutes a determination by the Commissioner that the investigator is not eligible to conduct clinical investigations subject to the requirements for prior submission to FDA, and that the results of any clinical investigations conducted by the clinical investigator may not be considered by FDA in support of any application for an exemption or PMA. Any notice issued under this section will further state that it is given because of the professional relations between the investigator and the person notified, and FDA is not advising that any action be taken by the person notified.

(2) A determination that an investigator has been disqualified and the administration record for the determination are available to the public upon request, subject to the provisions in 21 CFR part 20. A consent agreement under paragraph (e) of this section is available to the public upon request.

(3) Whenever FDA has reason to believe that an investigator may be subject to disqualification, the agency may, in its discretion, so notify the sponsor of any ongoing clinical investigation in which that investigator is participating. This notification will occur simultaneously with or subsequent to the agency's proposal to disqualify the investigator under paragraph (f) of this section, unless safety considerations warrant earlier notification of the sponsor.

(i) *Alternative or additional actions to disqualification or a consent agreement.* Disqualification of an investigator under this subpart is independent of, and neither in place of nor a precondition to, other proceedings or actions authorized by the act. FDA may, at any time, through the Department of Justice, institute any appropriate judicial

proceedings (civil or criminal) and any other appropriate regulatory action, in addition to or in place of, and prior to, simultaneously with, or subsequent to, disqualification. The agency may also refer pertinent matters to another Federal, State, or local government agency for such action as that agency determines to be appropriate.

(j) *Suspension or termination of an investigator by a sponsor.* The sponsor of an investigational study may at any time remove an investigator from further participation in the clinical investigation, whether or not the Commissioner has commenced any action to disqualify the investigator. The sponsor need not utilize either the grounds or the procedures for disqualification set forth in this subpart. If a sponsor removes an investigator from a clinical investigation, the sponsor shall notify FDA in writing and, where the removal is due to noncompliance with the requirements of this part, or any other FDA regulation governing the conduct of investigators, give the reasons for such removal as soon as possible, but in no event later than 15 days after such removal.

(k) *Reinstatement of a disqualified investigator.* (1) An investigator who has been disqualified may be reinstated as eligible to conduct clinical investigations subject to requirements for prior submission to FDA, or as acceptable to be the source of clinical investigations to be submitted to FDA, if the Commissioner determines, upon an evaluation of a written submission from the investigator, that the investigator can adequately assure that he or she will conduct such studies in compliance with the requirements set forth in this part and other FDA regulations governing the conduct of investigators. A guideline for the reinstatement of any disqualified investigator is available upon request from the Health Assessment Policy Staff (HFY-20), Office of Health Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(2) A disqualified investigator who wishes to be so reinstated shall present in writing to the Commissioner reasons why he or she believes he or she should be reinstated and a detailed description of the corrective actions the investigator has taken or intends to take to assure that the acts or omissions that led to the disqualification will not occur. The Commissioner may condition reinstatement upon the submission of an acceptable protocol for a specific clinical investigation providing for additional corrective actions or special undertakings by a sponsor, an institution, an institutional review

committee, or another investigator to review in detail the investigator's compliance with agency requirements, or the investigator being found in compliance with the applicable FDA regulations upon an inspection.

(3) If an investigator is reinstated, the Commissioner will notify the investigator and all persons who were notified under paragraph (h) of this section of the disqualification of the investigator. A determination that an investigator has been reinstated is

disclosable to the public under part 20 of this chapter.

Dated: September 29, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-24475 Filed 10-5-93; 8:45 am]

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Federal Register

**Wednesday
October 6, 1993**

Part III

Department of Labor

Employment and Training Administration

20 CFR Part 655

Wage and Hour Division

29 CFR Part 507

**Applications and Requirements for
Employers Using Aliens in Specialty
Occupations and as Fashion Models;
Proposed Rule**

DEPARTMENT OF LABOR**Employment and Training Administration****20 CFR Part 655**

RIN 1205-AA89

Wage and Hour Division**29 CFR Part 507**

RIN 1215-AA69

Labor Condition Applications and Requirements for Employers Using Aliens on H-1B Visas in Specialty Occupations and as Fashion Models

AGENCY: Employment and Training Administration, Labor, and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This rule is being proposed to clarify provisions of the Immigration and Nationality Act (INA) as it relates to the temporary employment in the United States (U.S.) of nonimmigrants admitted under H-1B visas. This proposed rule also contains amendments which reflect the Department's enforcement policies which have been developed based on its operating experience since the H-1B program's inception. Additionally, this rule is proposed to clarify the Department's administration and enforcement, such as by defining terms not previously defined, clarifying that the Department has authority to perform investigations without a specific complaint, establishing special procedures for "job contractors," modifying the labor condition application (LCA) form and content, and explaining the Department's enforcement of the wages required to be paid to H-1B nonimmigrants.

DATES: Public comments are invited. Comments shall be received by November 5, 1993 in order to expedite the Department's ability to provide more specific guidance to the regulated community through issuance of a final rule.

ADDRESSES: Comments may be mailed to John R. Fraser, Acting Assistant Secretary, 200 Constitution Ave., NW., room S3510, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

On 20 CFR part 655, subpart I, and 29 CFR part 507, subpart H, contact Patrick Stange, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., room N-

4456, Washington, DC 20210.

Telephone: (202) 219-5263 (this is not a toll-free number).

On 20 CFR part 655, subpart I, and 29 CFR part 507, subpart I, contact Solomon Sugarman, Wage and Hour Division, Employment Standards Administration, Department of Labor, 200 Constitution Avenue, NW., room S-3502, Washington, DC 20210. Telephone: (202) 219-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:**I. Background**

On November 29, 1990, the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (INA or Act) was amended by the Immigration Act of 1990 (IMMACT), Public Law 101-649, 104 Stat. 4978. On December 12, 1991, the INA was further amended by the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Public Law 102-232, 105 Stat. 1733. These amendments assign responsibility to the Department of Labor (Department or DOL) for the implementation of several provisions of the Act relating to the entry of certain categories of employment-based immigrants, and to the entry and temporary employment of certain categories of nonimmigrants. One of the major provisions of the Act governs the entry temporarily of foreign "professionals" to work in "specialty occupations" in the U.S. under H-1B visas. 8 U.S.C. 1182(n) and 1184(c).

The H-1B category of specialty occupations consists of those occupations which require the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree (or its equivalent) in the specific speciality as a minimum for entry into the occupation in the U.S. 8 U.S.C. 1184(i)(1). In addition, a nonimmigrant in a specialty occupation must possess full state licensure to practice in the occupation (if required), completion of the required degree, or experience equivalent to the degree and recognition of expertise in the specialty. 8 U.S.C. 1184(i)(2). The category of "fashion model" requires that the nonimmigrant be of distinguished merit and ability. 8 U.S.C. 1101(a)(15)(H)(i)(b).

II. Issues

During the 1980s, as the economy grew and new jobs were being created, the influx of large numbers of nonimmigrants to the United States (U.S.) caused relatively little public concern. However, cyclical factors (the recent recession and relatively modest

recovery to date) combined with structural changes (the downsizing of industries with relatively highly-skilled workforces) and the experience so far gained in administering the H-1B program have caused the Department of Labor to reexamine the rules implementing it. Such reevaluation is warranted based on concerns that the large number of aliens provided H-1B visas to work in the U.S. during a sustained period of high unemployment may be adversely affecting the employment opportunities of U.S. workers. Large numbers of employers continue to seek approval to hire foreign workers under the permanent and temporary immigration programs, including the H-1B program. In addition, through our enforcement and administration of the H-1B program, the Department has become aware of program issues that need further clarification and believes that the public would benefit from articulation of enforcement policies that have been developed as the program has been implemented.

To address these problems, the Department is proposing to revise existing regulations for the H-1B program.

The Department invites written comment from interested parties on these proposed changes. Officials from the Employment and Training Administration (ETA) and the Wage and Hour Division (WH) are responsible for reviewing all comments and recommendations that are submitted by the public in this rulemaking.

The following are the changes that the Department is proposing:

A. Limiting the Scope of the Labor Condition Application**1. Validity Period**

Under section 214(g)(4) of the Immigration and Nationality Act, the period of authorized admission as an H-1B nonimmigrant may not exceed 6 years. Section ____ 750 of the interim final H-1B regulations published at 57 FR 1316 (January 13, 1992) provides that a certified labor condition application shall be valid for the period of employment indicated on Form ETA 9035; however, in no event can the validity period of a labor condition application (LCA) exceed 6 years.

The Department is proposing to bring the validity period of LCAs filed into conformity with Immigration and Naturalization Service's (the Service) regulations at 8 CFR 214.2(h)(9)(iii)(B) by reducing the validity period of a labor condition application from 6 years to 3 years. The Service's regulations limit the validity of an approved

petition to 3 years or the expiration of the validity period of the labor condition application, whichever comes sooner. It is therefore proposed that the LCA validity period will be no more than 3 years also. The validity period will begin with the starting date entered by the employer in the "Period of Employment" section of Item 7 on the LCA or the date ETA certifies the LCA, whichever is later. Any LCA previously filed with and certified by ETA will be "grandfathered" so that those LCAs remain valid for up to six years or the ending date of employment as certified.

ETA's and INS' data show that certain employers have requested certification for large numbers of job openings for which corresponding visa petitions have not been filed.

For example, one employer requested ETA certification of over 11,000 job openings but, to date, only 84 visa petitions have been filed with INS against these LCAs. The Department's proposed regulation is an attempt to curb this type of activity, which provides no advantage to an employer but can mislead U.S. workers regarding the actual number of job openings available within an employer's organization. The statute and Departmental regulations require that the employer identify, among other things, the number of H-1B nonimmigrants being sought as an important element of notice to the employer's U.S. workers, directly or through their bargaining representative, as well as its notice to the public. LCAs which indicate need for an artificially larger number of H-1B nonimmigrants can mislead U.S. workers and impede the Department's ability to manage the H-1B LCA process consistent with the statutory scheme.

Accordingly, it is proposed that § 750(a) be amended to incorporate this change.

2. Geographical and Occupational Scope

The Department is presently not receiving a true indication of the valid openings for which employers anticipate the need for H-1B nonimmigrants. ETA's operating experience indicates that some employers have been filing LCAs with "laundry lists" of every conceivable occupation and area where an H-1B nonimmigrant might be needed, in many cases on a single labor condition application. When this practice is coupled with the potential 6-year validity period of the applications, the information disclosed to the Department and the public can be substantially misleading with respect to the amount of hiring activity that is actually

occurring pursuant to this program. The Department is therefore proposing to limit an individual labor condition application to a single occupation and to geographic areas only within the jurisdiction of a single ETA regional office. As a result of this proposal, the Department believes that employers will be more likely to file LCAs for the actual number of job openings for which H-1B workers are sought, ETA will be able to better manage and collect data on the H-1B program, INS can exercise more control over the petitions filed against a labor condition application, and the Department will be better positioned to carry out enforcement activities under this program. The Department requests comments on this proposal with specific reference to whether and to what extent this change should promote the objective of receiving applications which represent a more accurate picture of actual job openings for which H-1B nonimmigrants are being sought, and whether the change might occasion any unintended operational consequences.

Accordingly, it is proposed that § 730(c)(2) be amended to incorporate this change.

B. Prevailing Wage Update

Under the interim final H-1B regulations, employers are required to obtain current prevailing wage information every 24 months throughout the period of employment of the H-1B nonimmigrant(s).

In the context of the proposed reduction in the validity period of a labor condition application, the Department considered leaving the prevailing wage update requirement unchanged (i.e., every 24 months or upon the filing of a new labor condition application). However, given a proposed maximum 3-year validity period of the application, where an employer is filing a new labor condition application to extend the period of employment beyond the initial 3 years, the employer could have to obtain prevailing wage information twice within a year: once, 24 months from the filing of the initial application and again upon the filing of the new application prior to the 3-year deadline. The Department is proposing instead what it considers a more sensible and reliable approach under which an employer will be required to obtain current prevailing wage information midway through the potential validity period of the application (at least every 18 months), as long as H-1B nonimmigrants are employed pursuant thereto.

Accordingly, it is proposed that § 730(e)(1)(ii) be amended to require that an employer obtain current

prevailing wage information prior to filing of a new labor condition application and by no later than 18 months after the application is filed, as long as H-1B nonimmigrants are employed pursuant thereto.

C. Notification to H-1B Nonimmigrants

Section 212(n)(1)(C) of the INA requires that an employer seeking to hire an H-1B nonimmigrant shall, at the time of filing the application, notify the bargaining representative of the filing of the labor condition application or, if there is no bargaining representative, post notice of filing in conspicuous locations at the place of employment. See 8 U.S.C. 1182(n)(1)(C). The interim final regulations at § 730(h)(1) implement this statutory requirement.

In the course of investigations under this program, the Wage and Hour Division has found that some employers have made false statements regarding wages and worksites and have failed to fulfill the obligations attested on the applications (for example, by not paying the H-1B nonimmigrants the rate specified). The Department is proposing that, in addition, employers be required to provide to each H-1B nonimmigrant a copy of the labor condition application. Such notification would be required no later than the date the H-1B nonimmigrant reports to the place of employment.

This requirement would increase protections for H-1B nonimmigrants by making them aware of the terms and conditions of employment attested to by the employer. By being required to provide each H-1B nonimmigrant with such notification, employers would be more likely to fulfill their obligations (e.g., pay the required rate), and H-1B nonimmigrants would be better able to understand and monitor their employment conditions and file complaints, if appropriate, with the Wage and Hour Division, alleging a misrepresentation of a material fact in the labor condition application or a failure to comply with the terms thereof. No new documentation requirement is being imposed on the employer. However, any affirmative action taken by the employer to record the date, time, and place of compliance with this requirement will be considered by the Department in determining whether the employer fulfilled its obligation as required.

Accordingly, it is proposed that § 730(h)(1) be amended by adding a new paragraph to state that each H-1B nonimmigrant shall be provided with a copy of the labor condition application under which the H-1B

nonimmigrant was admitted and is to be employed.

D. Identification of Prevailing Wage Rate and Source

Under the H-1B interim final regulations, employers must file with ETA a completed and dated original labor condition application and one copy. No documentation of the attestation elements must be submitted to ETA.

Employers have an affirmative obligation to obtain some form of prevailing wage information and the failure to do so is a violation of H-1B program requirements. The Department's administrative and enforcement experience in this program indicates that a number of employers have failed to obtain prevailing wage information. Therefore, the Department is proposing that employers be required to identify (on the LCA) the prevailing wage rate and the source utilized to obtain the wage information. This imposes no additional burden on an employer acting in compliance with the program's requirements, and would provide additional impetus for compliance by those who are not. ETA will continue to certify an LCA where all items on the LCA have been completed and information submitted on the form is not obviously inaccurate. However, an LCA that fails to contain this additional information or which indicates a prevailing wage data source not consistent with regulatory requirements would be rejected.

Accordingly, it is proposed that § _____.730 be amended by adding a new paragraph (c)(1)(vi) to state that for each area of intended employment, the labor condition application shall state the prevailing wage rate for the occupation and the source of such wage data. In addition, the LCA form has been modified to reflect this change.

E. Strike or Lockout Labor Condition Statement

Section 212(n)(1)(B) of the INA requires that an employer seeking to hire H-1B nonimmigrants must file an application with the Secretary stating that "[t]here is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment." The Department's interim final H-1B regulations at § _____.730(g) provide that:

[a]n employer seeking to employ H-1B nonimmigrants shall state on Form ETA 9035 that there is not at that time a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment. A strike or lockout which occurs after the labor condition application is

filed by the employer with DOL is covered by INS regulations at 8 CFR 214.2(h)(16) (new 8 CFR 214.2(h)(17)).

The Department has become aware that this provision does not address the potentially abusive situation in which an employer with a certified labor condition application could petition for additional H-1B nonimmigrants (and thus use H-1B nonimmigrants to break a strike or to weaken the bargaining position of U.S. workers) in the event of a labor dispute subsequent to the filing and certification of the application. Such use of H-1B nonimmigrants to weaken U.S. workers' bargaining position could be achieved by employers hiring H-1B nonimmigrants directly or obtaining such workers from job contractors. Therefore, to prevent this potential abuse, the Department proposes to amend the regulations, in § _____.730(g) consistent with the regulations for the similar program for H-1A nonimmigrant registered nurses, to prohibit employers from using a certified labor condition application to file visa petitions with INS for an occupation in which a strike, lockout, or work stoppage in the course of a labor dispute occurs at the employer's work site. Further, to prevent employers from obtaining H-1B nonimmigrants from job contractors in the event of a labor dispute, the Department proposes, through new § _____.735 to prohibit job contractors from referring H-1B nonimmigrants to work at worksites in occupations that are involved in a strike, lockout, or work stoppage in the course of a labor dispute. The proposed Form ETA 9035 is modified so that employers are required to attest that they will not use the labor condition application in support of any petition filed with INS for H-1B nonimmigrants if a strike, lockout, or work stoppage in the course of a labor dispute involves the occupation covered by the LCA at the place of employment at any time during its validity period after the labor condition is certified. The Department also proposes to amend the regulations to require employers to notify DOL within 3 days of the start of a strike, lockout, or work stoppage in the course of a labor dispute at any worksite that is specified on a certified labor condition application. Upon receiving such a notification, the Department will undertake the necessary fact finding to determine whether or not the Secretary shall issue a strike determination to the INS pursuant to the Service's regulations at 8 CFR 214.2(h)(17).

F. H-1B Wages

1. In-kind Wages

Operating experience indicates that some employers provide "in-kind" perquisites for their foreign workers. These perquisites can include, but are not necessarily limited to, the following: allowances to compensate for the maintenance of two residences, allowances to a spouse who is ineligible to obtain work authorization in the U.S., dependents' educational expenses, housing expenses, automobile expenses, food reimbursement, travel reimbursement, international income tax equalization, family resettlement expenses, and family orientation expenses.

A discussion of in-kind payments in the preamble to the interim final rule dated January 13, 1992, indicated that the Department considers full payment of wages "cash-in-hand" to be required, and that no credit toward the required wage rate can be taken by an employer in the form of the value of in-kind perquisites provided. The Department invited comments regarding whether wage credit should be allowed in certain limited circumstances. Sixteen commenters (8 pro and 8 con) responded. The commenters supporting the proposal to allow in-kind credit acknowledged that the Department would need to clarify non-cash forms of perquisites and fringe benefits. The commenters opposing the proposal advocated that such perquisites are for the benefit of the employer and no consideration should be given including the value of these perquisites in meeting the wage requirements of the program.

After carefully considering the comments, and reviewing the Department's experience in administering and enforcing the program's wage requirement, the Department has concluded that the status quo is the correct position; that wage credit for in-kind perquisites will not be permitted in light of the negative impact of such wage credits on workers, the public, and the Department's investigative staff. The Department has decided that the regulations at § _____.730 should state even more explicitly that no credit for any in-kind perquisite is allowed towards meeting the wage requirement of the program. This position is consistent with other Departmental immigration programs (such as ETA's alien certification program for permanent immigrants) and better assures that U.S. workers will not be adversely impacted.

2. Cash Payments To Be Characterized as Wages

The Department's investigative experience has shown that H-1B nonimmigrants are receiving various types of cash payments, including recurring transportation payments, air fare reimbursement, daily home-to-work transportation expense reimbursement, and bonuses. Questions have arisen regarding some employers' characterization of these payments as "wages" for purposes of determining whether the employer has satisfied its wage requirement and, if not, for purposes of computing back wage liability.

Being responsive to employer concerns for clarity regarding their obligations and liabilities and to reflect enforcement policies developed in response, the Department proposes to articulate standards for considering bonuses and similar payments in satisfying the wage requirement. The Department is proposing that such remunerations can be characterized or credited as wages only when all of the following conditions are met:

The payment is reported by the employer to the Internal Revenue Service as a "wage" for tax purposes;

The payment is remuneration to be paid in terms of amount per hour, day, month, or year (consistent with the definition of wages in the current regulation); and

The payment is not an expense allowance or reimbursement for expenses incurred in the performance of the employee's duties for the employer.

The Department has considered other formulations as possible determinants of whether any particular cash payment is creditable as wages. In particular, the Department considered the adoption of the Fair Labor Standards Act "regular rate" rule (see 29 CFR part 788). After careful deliberation, however, the Department concluded that the proposed criteria would better serve the Congressional purposes regarding wage protections by stating clear and reasonable standards on which both employers and workers can rely in devising pay plans in compliance with the H-1B wage requirements.

Under the proposed criteria, a sign-up bonus would not be creditable as wages, even during the week it is paid, since it is not remuneration for work during a particular period of time. But a production bonus tied to a certain period of time may be counted as wages for the period during which the work/production was performed. Similarly, a completion bonus already paid at the end of a year (or other period of time)

may be counted as wages allocated back over the completed period. However, amounts paid as expense allowances or expense reimbursements would not be creditable, and reimbursement for air fare or other such expenses incurred in reaching the U.S. work site would not be creditable.

Accordingly, section § _____.730 is proposed to be amended to incorporate these changes.

3. Allowable Deductions From Wages

The Department's investigative experience shows that deductions from H-1B nonimmigrants' wages other than those legally required (e.g., Social Security, Federal taxes) are occurring. Such deductions from an H-1B nonimmigrant's wages are shown in a variety of ways, including as advances, loans, or fees which reimburse the employer for expenditures including wage advances; personal loans; costs related to obtaining the employee's H-1B visa (such as INS and attorney fees); costs to transport the workers to and from the work site(s) within the U.S. The Department has concluded and through enforcement policy established that it is impermissible for employers to utilize wage deductions to shift their own business expenses to their H-1B nonimmigrants or to circumvent the requirement for payment of wages when due.

Therefore, the Department is proposing a clarification of the rule, reflecting its established enforcement policy, to articulate clear standards for permissible deductions. These standards accommodate deductions that are required by law, such as income tax. In addition, the employer could make deductions that meet all of the following criteria:

The deduction is pursuant to a written, voluntary authorization from the worker pursuant to the worker's request;

The deduction is principally for the benefit of the employee;

The deduction does not recoup a business expense or any costs incurred because they are required by the employer;

The deduction occurs against the wages of domestic workers as well as H-1B nonimmigrants where the employer has such domestic workers; and

The deduction amount cannot exceed the limits imposed by the garnishment provisions found in section 303 of the Consumer Credit Protection Act (29 CFR part 870) (15 U.S.C. 1673).

These criteria do not regulate in any way the manner in which an employee may utilize his or her earnings from employment in the U.S., except that

costs incurred by an H-1B nonimmigrant that are required by the employer (for example, a uniform required by the employer) or which legitimately reflect a business expense of the employer would constitute impermissible wage deductions under these criteria.

These criteria are intended to not impede legitimate financial transactions between employers and their employees pursuant to voluntary agreements such as for wage deductions for health or life insurance, or even for advances on wages provided however that these are truly voluntary and do not constitute a transfer of business costs from the employer to the employee.

The Department is requesting public comment specifically regarding an employer's responsibility to bear the costs to transport H-1B nonimmigrants to the U.S. from their home country or another country where the individual is arriving from; and for their return transportation at the end of their employment.

Accordingly, section § _____.730 is proposed to be amended to incorporate these changes.

G. Clarifying the Prevailing Wage 5% Provision

The H-1B program's "required wage rate" is the higher of either the "actual" wage or the "prevailing" wage. Acknowledging Congressional intent as expressed in the Conference Report, the interim final regulations base "prevailing" wage determinations on the procedures in the current permanent alien labor certification program. H.R. Conf. Rep. No. 101-955, p. 122, reprinted in 1990 U.S. Code Cong. & Admin. News 6787. The permanent program regulations at 20 CFR 656.40(a)(2)(i) state that "Since it is not always feasible to determine such an average rate of wages (i.e., prevailing wage) with exact precision, the wage set forth in the application shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages." This same provision regarding a 5% variable appears in the interim final regulation for the H-1B program, at § _____.730(e)(1)(ii)(C).

The Department's experience in administering and enforcing the H-1B program has revealed some confusion and uncertainty regarding the effect of the regulatory language regarding a 5% variable. Some employers have asserted the view that where the prevailing wage, rather than the actual wage, is the minimum amount required to be paid, the employer is required to pay no more than 95% of the prevailing wage,

whether to initially comply with H-1B program requirements or in back wages upon being found in violation. In a few cases, inconsistent technical assistance has been provided by Departmental representatives in response to employers' inquiries regarding a 5% variable. To resolve such uncertainties and inconsistencies, the Department is proposing to reflect its established enforcement policy in the regulations to the effect that the 5% variable be utilized as follows: If the required wage rate is the prevailing wage and if an employer pays a rate that is no less than 95% of that rate, no violation will be cited and no back wages will be assessed. However, if the employer is found to have paid less than 95% of the prevailing rate, a violation will be cited and back wages will be assessed and due based on 100% (not 95%) of the prevailing rate.

This 5% variable exists only in the "prevailing" wage context and has no impact on the "actual" wage portion of the required wage rate principle. Where the required wage rate is the actual wage because it is higher than the prevailing wage, the full actual wage must be paid by the employer; no 5% variable is applicable.

Accordingly, § _____.730 is proposed to be amended.

H. Treatment of Job Contractors

In the preamble to the revised interim final rule of January 13, 1992 (57 FR 1318), the Department indicated that job contractors are treated like any other employer. The Department's objective in this approach—under which "job shop" employers would be held to the same regulatory standards as all other employers—was to prevent such employers from importing H-1B nonimmigrants and contracting them out to companies at "discount" wages, thereby adversely affecting the wages and working conditions of similarly employed U.S. workers. In implementing this approach at the inception of the program, the Department was attempting to devise a reasonable and appropriate means for achieving the purposes of the program in the absence of specific guidance in the statute and the legislative history regarding how program requirements would apply to job contractors.

After obtaining considerable programmatic experience regarding the operations and effects of job contractors using H-1B nonimmigrants, the Department is proposing to clarify how labor condition applications should be completed by job contractors and amend the regulations to create certain additional standards for such

employers. These standards are patterned in large part on those in the H-1A nonimmigrant, registered nurses' program, which is similar to the H-1B program in purpose and operation.

The Department is proposing a distinct definition for "job contractor." First, a job contractor is an employer whose workforce (including H-1B nonimmigrants) perform their duties in whole or in part at worksite(s) not owned, operated, or controlled by the employer. Further, a job contractor is distinguished from an employer of employees whose duties require them to travel from site-to-site to perform their assignments that are all in a day's work, e.g., computer service, copying machine service, etc. (such latter employer being subject to the regular requirements of the H-1B program) by consideration of factors such as: (1) Indicia of an employment relationship (e.g., supervision of performance) between the H-1B nonimmigrants and the worksite entity (which, it should be noted, cannot legally employ such workers without filing appropriate LCAs and visa petition(s)); (2) whether the worksite entity furnishes the H-1B nonimmigrants with the tools necessary to perform the duties or to provide the services contracted for; and (3) whether the H-1B nonimmigrant is considered to be "on travel" in the conventional sense (e.g., is not provided with travel expenses, allowance, or reimbursement).

If the employer filing the LCA meets this definition of a job contractor, the information to be provided on the labor condition application in item 7 (occupational information) must pertain to the location(s) (city and state) of any and all worksite entities. For a worksite or an occupation that was not known to the job contractor at the time the LCA was filed, the employer must file a new LCA for the new location.

A job contractor filing an LCA must indicate thereon the location(s) at which the H-1B employer will actually work (and for which the prevailing wage must be determined), not the employer's headquarters or office location if different. If the contractor wishes to relocate the H-1B nonimmigrant to work at any location not listed on an approved LCA, an appropriate LCA must be filed and approved (and the appropriate prevailing wage determined) before any H-1B nonimmigrant may be employed at that location.

If the employer filing the LCA is a job contractor, the employer's obligations under the proposed rule are different from those of other employers with regard to three other matters: the

determination of the actual wage, the bar on interference with a strike or lockout, and the requirement for notice to employees.

The interim final regulation defines actual wage as the rate paid by the employer to workers at the place of employment with experience and qualifications similar to those of the H-1B nonimmigrant's. Place of employment is defined as the worksite or physical location where work is performed. Commenters requested clarification and expressed concern about the feasibility of an employer complying with this actual wage requirement when the employer is not the only employer operating at the worksite or does not control the worksite. Commenters indicated that worksite entities might consider their wage scale(s) proprietary information and would be reluctant to release it to job contractor(s) or competitors. One commenter stated that such disclosure may potentially present antitrust violations. Considering these comments and programmatic experience, the Department does not propose that a job contractor needs to take into consideration wages paid to workers not directly employed by it. However, a job contractor cannot reduce the wages of an H-1B nonimmigrant should such a worker be temporarily employed at a place of employment where the wages are lower than another place of employment. Therefore, it is proposed that the regulations clarify that a job contractor must determine its actual wage based on the wage rate paid by that job contractor to all other employees with similar experience and qualifications in the occupation in question.

The Department does not propose to change the current regulations with regard to the prevailing wage or working conditions, both of which are to be determined for the area within which the worksite is located. Thus a job contractor is required to determine the prevailing wage for the occupational classification in the area of intended employment (i.e., the area that encompasses the actual place where the work is to be performed). The job contractor must also provide working conditions to the H-1B nonimmigrants that do not adversely affect the working conditions of other workers employed in the area of intended employment, which encompasses the worksite where the work is to be performed. Neither the comments nor the Department's programmatic experience indicate a need to modify the regulations on these requirements which are in accordance

with the statute and Congressional intent.

The Department proposes to amend the regulations with regard to strike/lockout and employee notification.

The current regulatory language pertaining to a strike/lockout addresses such action at the place of employment at the time the employer files the LCA. Thus, the regulation does not address the situation in which a job contractor might place an H-1B nonimmigrant at a worksite where workers in the same occupational classification(s) as the H-1B nonimmigrant are in a strike/lockout status. In the Department's view, such action by a job contractor—acting in concert with a worksite employer to break a strike or facilitate a lockout—would be contrary to the Congressional intent to protect the collective bargaining rights of U.S. workers. The Department is proposing an amendment to make the H-1B regulation consistent with the regulations for similar nonimmigrant programs administered and enforced by DOL (see 20 CFR 655.310(h); 20 CFR 655.510(e)). During the validity period of an LCA, a job contractor may not be permitted to place an H-1B nonimmigrant at a worksite where in the occupational classification of the H-1B nonimmigrant are in the course of a strike/lockout. Further, as discussed in Section E, above, if a strike/lockout occurs among the job contractor's employees during the validity of the LCA, the job contractor will be required to give written notice to ETA within three days of the occurrence.

The current regulatory language pertaining to employee notice requires that, prior to filing the LCA, the employer must provide notice to the employee's bargaining representative or if there is no such representative, must post the notice in the employer's establishment in the area of intended employment for 10 days. Thus, the regulation does not address the common situation in which a job contractor sends H-1B nonimmigrants to a worksite where U.S. workers—not employed by the job contractor—were afforded no prior notice of the impending use of nonimmigrants. In order to better achieve the Congressional intent that U.S. workers be notified, the Department is proposing that the regulation be amended to require that on or before sending an H-1B nonimmigrant to a worksite a job contractor notify the bargaining representative for workers in the occupation in which the H-1B nonimmigrant will be placed. If there is no such bargaining representative, the Department is proposing that the job

contractor post notices at such location for 10 days on or before any H-1B nonimmigrant begins to work there.

Accordingly, § _____.715 is proposed to be amended and § _____.735 is proposed to be added.

I. Defining "Aggrieved" and "Interested" Parties

The current interim final rule contains no definitions for two terms, "aggrieved party or organization" and "interested party," which are significant to the enforcement process prescribed by Congress. The Department delayed the promulgation of these definitions in order to obtain experience in administering and enforcing the H-1B program. The Department now proposes—based on that experience, as well as on Congressional intent and statutory structure—to define these terms so as to promote effective enforcement.

In section 212(n)(2) of the INA, Congress directed the Department to establish a process to respond to complaints from "aggrieved" parties and to provide opportunities for administrative hearings for "interested" parties following investigative determinations. In addition, Congress required that "interested" parties be afforded access to certain documentation to be maintained by employers. The legislative history reflects Congress' intention that the Department's enforcement process would be the means for protecting both U.S. and foreign workers; no comprehensive pre-admission screening or review process was established. The Department has concluded that, in order to comply with the Congressional mandate for effective enforcement, the terms "aggrieved" and "interested" party should be broadly defined in a manner consistent with their common meaning.

"Aggrieved party or organization" will be defined as one whose operations or interests are potentially adversely affected by the alleged violation(s). Based on the Department's experience regarding the scope and nature of adverse effects of violations, as well as the sources for reliable, actionable allegations of violations, the definition of the term "aggrieved party or organization" will encompass not only private sector persons and organizations (e.g., workers, their representatives, competitors of the allegedly violating employer), but also government agencies and officials (e.g., Department of State consular officers, State Employment Security Agency officials).

"Interested party" will be defined to include persons and entities who are

potentially affected by the employer's action or the investigative determination at issue. The Department is not proposing that such an individual need be adversely affected. By using the term "interested" (rather than "aggrieved") to identify the party for whom hearing opportunities and access to employer documentation would be required, Congress clearly mandated a broader class of persons for these rights than for investigations in response to complaints. The Department's broad definition, based on the Department's experience, encompasses both private and public parties.

Accordingly, § _____.715 is proposed to be amended to incorporate this change.

J. Sanction of Violations in the Absence of Complaints

The Department is reconsidering its earlier determination to limit its investigation of possible labor condition application violations to those where complaints have been filed by aggrieved parties. It is proposing to amend the regulations to provide for "directed" investigations, i.e., investigations which the Department may conduct on its own initiative.

The proposed change would in no way contravene the Congressional intent that the program be complaint-driven. Labor condition applications, as required under the INA, will continue to be accepted and certified unless incomplete or obviously inaccurate. The proposed change will facilitate enforcement by removing a regulatorily-imposed restriction on the Department's investigative authority, so that the program's purposes can be better served.

Directed investigation and enforcement would be appropriate where the Department becomes aware of a possible violation of a labor condition application, whether in the course of an investigation of another employer, in the course of an investigation under another statute, as the result of the receipt of public information or from some other source. Under the current regulations, the Department cannot investigate such possible violations in the absence of a complaint. See §§ _____.800(b) and _____.805(a) (1993).

This proposed change would bring the H-1B program in line with the regulations and practice under the H-1A nonimmigrant nurses' program. See 20 CFR 655.400(b) and 655.405(a). Under the H-1A program, which has statutory enforcement language similar to the H-1B program, investigations are conducted as a result of a complaint or otherwise. *Id.*; see also U.S.C. 1182 (m) and (n).

When the proposed rule was published in this rulemaking, based on its review of the legislative history, the Department questioned its authority to conduct directed investigations under the H-1B program, because discussion of the enforcement aspects of the H-1B program in the legislative history spoke of it as being "complaint-driven." However, examination of those statements shows that they consistently were made for the purpose of limiting DOL pre-acceptance review and investigation of the labor condition application; the statements were not directed to the scope of the Department's authority to investigate the LCA after it has been certified.

In addition to being consistent with the Department's regulations and practice under the similar H-1A program, directed enforcement in the H-1B program clearly is not prohibited by and can be supported under an analysis of the language of the statute. Section 212(n)(2)(A) of the INA directs the Secretary to establish a process for the receipt, investigation, and disposition of complaints. 8 U.S.C. 1182(n)(2)(A). Section 212(n)(2)(B) states that, "[u]nder such process [established pursuant to subparagraph (A)], the Secretary shall provide, within 30 days after such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C)." 8 U.S.C. 1182(n)(2)(B). Unlike subparagraph (B), subparagraphs (C) and (D) of section 212(n)(2), which provide for notice and opportunity for a hearing for failure to meet a condition, for sanctions, and for back pay orders, do not refer back to "such process" as must be established pursuant to subparagraph (A). 8 U.S.C. 1182(n)(2) (C) and (D).

Thus, subparagraphs (C) and (D) stand on their own as processes for sanctioning employers which violate labor condition applications. Such employers may be placed in the subparagraphs (C) and/or (D) notice and hearing processes either as a result of a complaint and investigation under subparagraphs (A) and (B) or as a result of some other action, such as an investigation undertaken by the Department on its own accord. As indicated above, this is essentially the same statutory framework under which the Department investigates and sanctions H-1A program violations in the absence of a complaint. See 8 U.S.C. 1182(m)(2)(E) (ii), (iii), (iv), and (v).

In addition to making enforcement more consistent across these programs, the Department believes that directed enforcement for H-1B labor condition applications would enhance compliance

under the program and protection of U.S. and foreign workers. Such protection is consistent with a general Congressional principle in enacting immigration laws—to provide for the admission of foreign workers only under terms and conditions of employment that do not adversely affect the wages and working conditions of similarly employed U.S. workers. See, e.g., 8 U.S.C. 1182(a)(5)(A), 1182(m)(2)(A)(iii), 1182(n)(1)(A), and 1188(a)(1)(B). It is not consistent with that principle for the Department to ignore information or evidence on possible H-1B violations received other than through a complaint.

Comments are specifically requested on this proposed change.

III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, as amended, (44 U.S.C. 3501 *et seq.*) the reporting provisions that are included in this regulation have been submitted to the Office of Management and Budget (OMB) and have been assigned OMB Control No. 1205-0310.

The Employment and Training Administration estimates that over 50,000 employers per year will submit labor condition applications. The public reporting burden for this collection of information is expected to increase, based on the Department's operating experience, from an average of one hour per response, to one and one-quarter hours per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and preparing the application. The reporting burden is expected to increase due to the proposed requirement that employers provide notice to H-1B nonimmigrants of the terms and conditions of employment. The employer will be required to attest that it has provided, or will provide, to each H-1B nonimmigrant a copy of the LCA under which they are employed no later than the date the H-1B nonimmigrant reports to work at the place of employment. This is the only proposed amendment contained in this proposed rule which is expected to increase the reporting burden per response.

Written comments on the collection of information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

Changes to Form ETA 9035 as a result of the proposed regulatory changes are

summarized below. Additionally, based on operating experience, a few technical changes were made to the Form ETA 9035 to clarify the labor condition application process and requirements. Included among the changes made to the form are the following:

a. Items 7 (a) and (b) have been amended consistent with the proposal to limit the scope of a labor condition application to one occupation.

b. Item 8(c) has been amended to clarify that the strike/lockout labor condition statement is a continuing obligation and that the employer must attest that, if a strike occurs in the occupation at the place of employment after the labor condition application is certified, the employer will not use the certified LCA in support of petition filings with INS for H-1B nonimmigrants to work in the occupation and place affected by the strike.

c. A new item 7(e), "Prevailing Wage Rate and Its Source" has been added.

d. Item 8(d) has been amended to include the requirement that each H-1B nonimmigrant be provided with a copy of the LCA approved by the Department and used to support the petition for entry (or renewal) of the aliens.

e. Item 8(d)(ii), and the corresponding instruction item, have been revised to make it clear that, in the absence of a bargaining representative, notice of filing must be posted for 10 days in at least two conspicuous places at each location where H-1B nonimmigrants will work.

f. At the request of the INS, a "Date" line has been added to the government endorsements section. This change will allow ETA officials to indicate the date the labor condition application was certified and to accommodate employers filing labor condition applications where the period of employment commences at some future date.

g. The statement regarding the ability to file complaints, required under the notice labor condition statement, has been pre-printed on the form.

IV. Summary

Comments are invited on issues raised in this notice. At the time final regulations are promulgated, the Department will consider all comments from all **Federal Register** publications pertaining to DOL's administration and enforcement of the H-1B program.

Regulatory Impact and Administrative Procedure

E.O. 12291

The rule does not have the financial or other impact to make it a major rule

and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order 12291, 3 CFR, 1981 Comp., Page 127, 5 U.S.C. 601 note.

Regulatory Flexibility Act

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Catalog of Federal Domestic Assistance Number

This program is not yet listed in the Catalog of Federal Domestic Assistance.

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Fashion models, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

29 CFR Part 507

Administrative practice and procedures, Aliens, Employment, Enforcement, Fashion models, Immigration, Labor, Penalties, Reporting and recordkeeping requirements, Specialty occupation, Wages, Working conditions.

Adoption of the Joint Rule

The agency-specific adoption of the joint rule, which appears at the end of the common preamble, appears below.

Signed at Washington, DC, this 29th day of September, 1993.

Robert B. Reich,
Secretary of Labor.

Accordingly, part 655 of chapter V of title 20, and part 507 of chapter V of title 29 of the Code of Federal Regulations, are amended as follows:

TITLE 20—EMPLOYEES' BENEFITS

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H) (i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec.

221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); and 8 CFR 214.2(h)(4)(i).

Section 665.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 507—ENFORCEMENT OF H-1B LABOR CONDITION APPLICATIONS

2. The authority citation for part 507 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184, and 29 U.S.C. 49 *et seq.*; and Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

3. In § ____, 715, the definition of "aggrieved party" is added to read as follows:

§ ____, 715 Definitions.

Aggrieved party means a person or entity whose operations or interests are adversely affected by the employer's alleged non-compliance with the labor condition application and includes, but is not limited to:

(1) A worker, whose job, wages, or working conditions are adversely affected by the employer's alleged non-compliance with the labor condition application;

(2) A bargaining representative for workers whose jobs, wages, or working conditions are adversely affected by the employer's alleged non-compliance with the labor condition application;

(3) A government agency which has a program that is impacted by the employer's alleged non-compliance with the labor condition application; and

(4) A competitor adversely affected by the employer's alleged non-compliance with the labor condition application.

* * * * *

4. In § ____, 715, in the definition of "Independent authoritative source survey", the phrase "24-month" is removed the second time it appears and the phrase "18-month" is added in lieu thereof; in the definition of "Required wage rate", the number "24" is removed and the number "18" is added in lieu thereof; and the definitions of "Interested party" and "Job contractor" are added to read as follows:

§ ____, 715 Definitions.

* * * * *

Interested party means a person or entity who is affected by the actions of an H-1B employer or about the outcome of a particular investigation; and includes any person, organization, or entity who has notified the Department of his interest or concern in the Administrator's determination.

Job contractor means an employer whose employees perform their duties in whole or in part at worksites that are owned, operated, and controlled not by the job contractor, but by an entity with which the job contractor, has a contractual relationship and which displays indicia of an employment relationship with the job contractor's employees (e.g., assignment of tasks; day to day supervision of performance; evaluation of performance).

* * * * *

5. In § ____, 730, in the introductory text of paragraph (c)(1), the word "classification(s)" is removed and the word "classification" is added in lieu thereof; in paragraph (c)(1)(i), the word "occupations(s)" is removed and the word "occupation" is added in lieu thereof; a new paragraph (c)(1)(vi) is added and paragraph (c)(2) is revised, to read as follows:

§ ____, 730 Labor condition application.

* * * * *

(c) * * *

(1) * * *

(vi) The prevailing wage for the occupation in the area of intended employment and the source relied upon by the employer to determine that wage.

(2) **Multiple positions, occupations, or places of employment.** The employer shall file a labor condition application for each occupation in which the employer intends to employ one or more H-1B nonimmigrants. An employer may file a single labor condition application for more than one place of employment only if all places of employment covered by the application are located within the jurisdiction of a single ETA regional office and the employer specifies such places on the labor condition application. Where the employer

intends to employ an H-1B nonimmigrant in various places under the jurisdiction of more than one ETA regional office, the employer must file an application with each such ETA regional office.

6. In § __.730, in paragraphs (e)(1)(iv), (e)(2)(iii)(B), and (e)(2)(iv), the word "occupation(s)" is removed each time it appears and the word "occupation" is added in lieu thereof; in the introductory text of paragraph (e)(1)(ii), in paragraph (e)(1)(iv), and in paragraph (e)(2)(iv), the number "24" is removed and the number "18" is added in lieu thereof; in the introductory text of paragraph (e)(2)(iii)(C)(2), the phrase "24-month" is removed the second time it appears and the phrase "18-month" is added in lieu thereof; the introductory text of paragraph (e)(1)(ii)(C) is revised and new paragraphs (e)(1)(v) and (e)(1)(vi) are added, to read as follows:

§ __.730 Labor condition application.

- (e) * * *
(1) * * *
(ii) * * *

(C) If the job opportunity is in an occupation which is not covered by paragraph (e)(1)(ii) (A) or (B) of this section, the prevailing wage shall be the average rate of wages, that is, the rate of wages paid to workers similarly employed in the area of intended employment. Since it is not always feasible to determine such an average rate of wages with exact precision, the wage set forth in the application shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages. See paragraph (e)(3) of this section. The prevailing wage rate under this paragraph (e)(1)(ii)(C) of this section shall be based on the best information available. The Department believes that the following prevailing wage sources are, in the order of priority, the most accurate and reliable:

(V) Employers are required to calculate the required wage rate in accordance with the following provisions:

(A) Payment of full wages when due. The employer shall pay the H-1B nonimmigrant the full required wage when due. No credit toward the required wage can be claimed by the employer for perquisites such as housing, automobile allowances, and airfare transportation.

(B) Cash payments. Cash payments, such as production bonuses, shall be considered in satisfying the wage rate only where such payments:

(1) Are reported by the employer to the Internal Revenue Service as wages;

(2) Are paid in terms of amount per hour, day, month or year; and

(3) Do not constitute an allowance or reimbursement for expenses incurred by the H-1B nonimmigrant in the performance of duties in the course of employment.

(vi) Deductions. Deductions shall not reduce the H-1B nonimmigrant's wages below the required rate unless such deductions:

(A) Are made pursuant to a written, voluntary authorization from the H-1B nonimmigrant pursuant to the H-1B nonimmigrant's request;

(B) Are principally for the H-1B nonimmigrant's benefit;

(C) Do not recoup a business expense or any costs incurred because they are required by the employer;

(D) Are made against the wages of domestic workers as well as H-1B nonimmigrants where the employer has such domestic workers; and

(E) Do not exceed the limits imposed by section 303 of the Consumer Credit Protection Act. 15 U.S.C. 1673.

7. In § __.730, in paragraph (e)(3), the following sentence is added before the last sentence of the paragraph:

§ __.730 Labor condition application.

- (e) * * *

(3) * * * No prevailing wage violation will be found if the employer paid a wage that is equal to or more than 95 percent of the prevailing wage as required by paragraph (e)(1)(ii)(C) of this section. If the employer paid a wage that is less than 95 percent of the prevailing wage, the employer will be required to pay 100 percent of the prevailing wage.

8. In § __.730, new paragraphs (g)(1)(i) and (g)(1)(ii) are added to read as follows:

§ __.730 Labor condition application.

- (g) * * *
(1) * * *

(i) Notice of strike or lockout. In order to remain in compliance with the no strike or lockout labor condition statement, if a strike or lockout of workers in the same occupational classification as the H-1B nonimmigrant occurs at the place of employment during the validity of the labor condition application, the employer, within three days of the occurrence of the strike or lockout, shall submit to ETA, by U.S. mail or private carrier, written notice of the strike or lockout. The labor condition application shall not be used in support of any petition

filings for H-1B nonimmigrants to work in the same occupation at the place of employment until ETA determines that the strike or lockout has ended.

(ii) ETA notice to INS. Upon receiving from an employer a notice described in paragraph (g)(1)(i) of this section, ETA shall examine the documentation, and may consult with the union at the employer's place of business or other appropriate entities. If ETA determines that the strike or lockout is covered under INS's "Effect of strike" regulation for "H" visaholders, ETA shall certify to INS, in the manner set forth in that regulation, that a strike or other labor dispute involving a work stoppage of workers in the same occupational classification as the H-1B nonimmigrant is in progress at the place of employment. See 8 CFR 214.2(h)(17).

9. In § __.730, the introductory text of paragraph (h)(1) is revised to read as follows:

§ __.730 Labor condition application.

- (h) * * *

(1) The fourth labor condition statement is established when paragraph (h)(1)(i) and either paragraph (h)(1)(ii)(A) or (h)(1)(ii)(B) of this section are met.

10. In § __.730, paragraph (h)(1)(i) is redesignated as new paragraph (h)(1)(ii)(A); paragraph (h)(1)(ii) is redesignated as new paragraph (h)(1)(ii)(B); paragraph (h)(1)(ii)(A) is redesignated as new paragraph (h)(1)(ii)(B)(1); paragraph (h)(1)(ii)(B) is redesignated as new paragraph (h)(1)(ii)(B)(2); paragraph (h)(1)(ii)(C) is redesignated as new paragraph (h)(1)(ii)(B)(3), and a new paragraph (h)(1)(i) is added to read as follows:

§ __.730 Labor condition application.

- (h) * * *
(1) * * *

(i) The employer shall, no later than the date the H-1B nonimmigrant reports to work at the place of employment, provide the H-1B nonimmigrant with a copy of the labor condition application submitted to the Department.

11. In § __.730, in the introductory text of newly designated (h)(1)(ii)(B), the word "classification(s)" is removed and the word "classification" is added in lieu thereof; the word "occupation(s)" is removed and the word "occupation" is added in lieu thereof; and the last sentence is revised to read as follows:

§ ____ .730 Labor condition application.

* * * * *

(h) * * *

(1) * * *

(ii) * * *

(B) * * * The posting of exact copies of the labor condition application shall be sufficient to meet the requirements of this paragraph (h)(1)(ii)(B) of this section.

12. A new § ____ .735 is added to read as follows:

§ ____ .735 Special provisions for job contractors.

(a) A job contractor seeking to employ H-1B nonimmigrants shall satisfy all the requirements of the labor condition application as provided in this rule and shall also comply with the following provisions:

(1) *The first labor condition statement: wages.* A job contractor shall comply with § ____ .730(e) of this subpart in its entirety but with the following provisos:

(i) Actual wage shall be the wages which the job contractor pays its own employees, wherever they may be located, who have similar experience and qualifications as the H-1B nonimmigrant for the specific employment in question. The actual wage shall not be based on the wages of employees not employed by the job contractor.

(ii) Prevailing wage shall be determined based on the area where the place of employment is located, *i.e.*, the worksite or physical location where the H-1B nonimmigrant actually performs the work.

(2) *The second labor condition statement: working conditions.* A job contractor shall comply with § ____ .730(f) of this subpart in its entirety but with the following proviso: The working conditions referred to in § ____ .730(f) are those existing in the area of intended employment where the worksite is located.

(3) *The third labor condition statement: no strike or lockout.* A job contractor shall comply with § ____ .730(g) in its entirety but with the following provisos:

(i) A job contractor shall attest that there is not at the time the labor condition application is filed a strike or lockout in the course of a labor dispute in the same occupational classification as the H-1B nonimmigrant in the job contractor's workforce.

(ii) A job contractor shall not place, lease, or otherwise contract out an H-1B nonimmigrant, during the entire period of the labor condition application's validity, to any place of employment where there is a strike or lockout in the course of a labor dispute in the same occupational classification as the H-1B nonimmigrant.

(4) *The fourth labor condition statement: notice.* A job contractor shall comply with § ____ .730(h) of this subpart in its entirety but with the following provisos:

(i) The job contractor shall, no later than the date the H-1B nonimmigrant reports to work at the employer's place of employment or at the worksite, whichever is first, provide the H-1B nonimmigrant with a copy of the labor condition application submitted to the Department.

(ii)(A) A job contractor shall attest that it has provided notice of filing no later than the date the labor condition application is filed to the bargaining representative of the job contractor's employees in the occupational classification in which the H-1B nonimmigrant will be employed; or

(B) If there is no bargaining representative, has provided notice of filing in conspicuous locations in the job contractor's establishment; and

(iii)(A) A job contractor shall provide notice of filing to the bargaining representative, if any, at each place of employment where it places, leases, or otherwise contracts out an H-1B nonimmigrant no later than on or before the date that the job contractor's H-1B nonimmigrants begin to work at each place of employment; or

(B) If there is no such bargaining representative at any such place of employment, the job contractor shall post notice of filing in conspicuous locations at the place of employment no later than the date that the job contractor's H-1B nonimmigrants begin to work at each place of employment.

(b) Where the provisions of this section are inconsistent with any provision in these regulations, this section shall take precedence over those provisions.

13. In § ____ .740, paragraph (a)(2)(i) is revised to read as follows:

§ ____ .740 Labor condition application determinations.

* * * * *

(a) * * *

(2) * * *

(i) When the Form ETA 9035 is not properly completed. Examples of a Form ETA 9035 which is not properly completed include instances where the employer has failed to check all the necessary boxes; or where the employer has failed to state the occupational classification, number of nonimmigrants sought, wage rate, period of intended employment, place of intended employment, or prevailing wage and its source; or where the application does not contain the signature of the employer or the employer's authorized agent or representative.

* * * * *

14. In § ____ .740, in paragraph (a)(2)(ii), the last sentence is revised to read as follows:

§ ____ .740 Labor condition application determinations.

(a) * * *

(2) * * *

(ii) * * * Examples of other obvious inaccuracies include stating a wage rate of \$1.00 per hour (which would be below the FLSA minimum wage), identifying multiple occupations a single labor condition application, or identifying places of employment within the jurisdiction on more than one ETA regional office on a single labor condition application.

15. In § ____ .750, in paragraph (a), the word "six" is removed each time it appears and the word "three" is added in lieu thereof.

16. In § ____ .760, in paragraph (a)(3) and in paragraph (a)(4), the word "occupation(s)" is removed and the word "occupation" is added in lieu thereof.

17. In § ____ .800, in paragraph (b), the phrase "pursuant to a complaint" is removed and the phrase "either pursuant to a complaint or otherwise" is added in lieu thereof.

18. In § ____ .805, in the introductory text of paragraph (a), the phrase "pursuant to a complaint" is removed and the phrase "either pursuant to a complaint or otherwise" is added in lieu thereof; and in paragraph (b), the word "occupation(s)" is removed and the word "occupation" is added in lieu thereof.

Note: These appendices do not appear in the Code of Federal Regulations.

Appendix 1—Form ETA 9035

Labor Condition Application for H-1B Nonimmigrants

DRAFT Department of Labor
Employment and Training Administration
U.S. Employment Service



1. Full Legal Name of Employer	5. Employer's Address (No., Street, City, State, and ZIP Code)	OMB Approval No.: 1205-0310
2. Federal Employer I.D. Number		
3. Employer's Telephone No. ()	6. Address Where Documentation is Kept (If different than item 5)	
4. Employer's FAX No. ()		

7. OCCUPATIONAL INFORMATION (Use attachment if additional space is needed)

(a) Three-digit Occupational Group Code (From Appendix B): _____ (b) Job Title (Check Box if Part-Time): _____

(c) No. of H-1B Nonimmigrants	(d) Rate of Pay	(e) Prevailing Wage Rate and its Source	(f) Period of Employment From To	(g) Location(s) Where H-1B Nonimmigrants Will Work (see instructions)

8. EMPLOYER LABOR CONDITION STATEMENTS (Employers are required to develop and maintain documentation supporting labor condition statements 8(a) and 8(d). Employers are further required to make available for public examination a copy of the labor condition application and necessary supporting documentation within one (1) working day after the date on which the application is filed with DOL. Check each box to indicate that the employer will comply with each statement.)

- (a) H-1B nonimmigrants will be paid at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher.
- (b) The employment of H-1B nonimmigrants will not adversely affect the working conditions of workers similarly employed in the area of intended employment.
- (c) On the date this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupation in which H-1B nonimmigrants will be employed at the place of employment, and, if such a strike occurs after this application is submitted, the application will not be used in support of petition filings with INS for H-1B nonimmigrants to work in the same occupation at the place of employment.
- (d) A copy of this application has been, or will be, provided to each H-1B nonimmigrant employed pursuant to this application, and, as of this date, notice of this application has been provided to workers employed in the occupation in which H-1B nonimmigrants will be employed: (check appropriate box)
 - (i) Notice of this filing has been provided to the bargaining representative of workers in the occupation in which H-1B nonimmigrants will be employed; or
 - (ii) There is no such bargaining representative; therefore, a notice of this filing has been posted and was, or will remain, posted for 10 days in at least two conspicuous locations where H-1B nonimmigrants will be employed.

9. DECLARATION OF EMPLOYER. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this application, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official's request, during any investigation under this application or the Immigration and Nationality Act.

Name and Title of Hiring or Other Designated Official _____ Signature _____ Date _____

Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor.

AN APPLICATION CERTIFIED BY DOL MUST BE FILED IN SUPPORT OF AN H-1B VISA PETITION WITH THE INS.

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this application is hereby certified and will be valid from _____ through _____.

Signature and Title of Authorized DOL Official _____ ETA Case No. _____ Date _____
 Subsequent DOL Action: Suspended _____ (date) Invalidated _____ (date) Withdrawn _____ (date)

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of a certified labor condition application. Public reporting burden for this collection of information is estimated to average 1 1/2 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of IRM Policy, DOL, Room N-1301, 200 Constitution Avenue, N.W., Washington, DC 20210; and to the OMB, Paperwork Reduction Project (1205-0310), Washington, DC 20503.

DO NOT SEND THE COMPLETED FORM TO EITHER OF THESE OFFICES

DRAFT

INSTRUCTIONS FOR COMPLETING FORM ETA 9035 - LABOR CONDITION APPLICATION FOR H-1B NONIMMIGRANTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to identical provisions at 20 CFR 655, subparts H and I, and to 29 CFR 507, subparts H and I.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by \$10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of this immigration document (U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Employers seeking to hire H-1B nonimmigrants in specialty occupations or as fashion models of distinguished merit and ability must submit the completed and dated original Form ETA 9035 (or a facsimile) and one copy of the completed original Form ETA 9035 to the regional certifying officer in the Department of Labor (DOL), Employment and Training Administration (ETA) regional office having jurisdiction over the State in which the position is located. See 20 CFR 655.720 for ETA regional office addresses. An application which is complete and has no obvious inaccuracies will be certified by DOL and returned to the employer, who may then file it in support of its petition with the Immigration and Naturalization Service.

Item 1. Full Legal Name of Employer. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Federal Employer I.D. Number. Enter employer's Federal Employer Identification Number (EIN) assigned by the Internal Revenue Service.

Item 3. Employer's Telephone No. Self-explanatory.

Item 4. Employer's FAX No. Self-explanatory.

Item 5. Employer's Address. Self-explanatory.

Item 6. Address Where Documentation is Kept. Self-explanatory.

Item 7. Occupational Information. Enter the information requested under the appropriate subheading. If necessary, continue on an attachment.

Item 7(a). Three-Digit Occupational Group Code. Enter the three-digit code from Appendix B which most clearly describes the job to be performed. (DOL purposes only.)

Item 7(b). Job Title. Enter the common name or payroll title of the job being offered. Check box to the right of the blank if position is part-time. A separate labor condition application shall be filed for each occupation in which H-1B nonimmigrants will be employed.

Item 7(c). Number of H-1B Nonimmigrants. Enter the number of H-1B nonimmigrants that will be hired in the three-digit occupational code stated in Item 7(a).

Item 7(d). Rate of Pay. Enter the salary to be paid in terms of the amount per hour, week, year, etc. If a wage range is listed for this item, the salary for each H-1B nonimmigrant shall be maintained in support of the application.

Item 7(e). Prevailing Wage Rate and its Source. Enter the prevailing wage rate in terms of the amount per hour, week, year, etc., and the State Employment Security Agency, published wage survey, or other source utilized by the employer to determine the prevailing wage for the occupational classification in which H-1B nonimmigrants will be employed; e.g. "Michigan State Employment Security Agency," or "Bureau of Labor Statistics Occupational Compensation Survey, Denver, Colorado, Metropolitan Area."

Item 7(f). Period of Employment. Enter the starting and ending dates during which the H-1B nonimmigrants will be employed.

Item 7(g). Locations Where H-1B Nonimmigrants Will Work. Enter the city and State of site or location where the work will actually be performed.

Item 8. Employer Labor Condition Statements. The employer must attest by checking off the conditions listed in (a) through (d) and by signing the application form. Employers must develop and maintain documentation to support labor condition statements 8(a) and 8(d). Documentation in support of a labor condition application shall be retained at the employer's principal place of business or worksite and made available to DOL upon such official's request. See 20 CFR 655.730 for guidance on the documentation that must support each labor condition statement.

Item 8(a). The employer must attest that H-1B nonimmigrants will be paid wages which are at least the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupational classification in the area of intended employment.

Item 8(b). The employer must attest that the employment of H-1B nonimmigrants in the occupations named will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

Item 8(c). The employer must attest that on the date the application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the named occupation at the worksite and that, if such a strike occurs after this application is submitted, the application will not be used in support of petition filings with INS for H-1B nonimmigrants to work in the same occupation at the place of employment.

Item 8(d). The employer must attest that as of the date of filing, notice of the labor condition application has been provided to workers employed in the named occupation. The application may be provided to the workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing must be posted in conspicuous places where H-1B nonimmigrants will be employed. Further, the employer must attest that each H-1B nonimmigrant employed pursuant to the application will be provided with a copy of the application. The notification shall be provided no later than the date the H-1B nonimmigrant reports to work at the place of employment.

Item 9. Declaration of Employer. One copy of this form must bear the original signature of the employer. By signing this form, the employer is attesting to the accuracy of the labor condition statements listed in items 8(a) through (d) and to compliance with these conditions. False statements are subject to Federal criminal penalties, as stated above. Failure to meet a condition of the application regarding strikes or lockouts, substantial failure to meet a condition of the application regarding notification of the bargaining unit representative, employees, or H-1B nonimmigrants, willful failure to meet a condition of the application regarding wages or working conditions, or misrepresentation of a material fact may result in additional penalties.

Appendix 2—DOT Three-Digit Occupational Group Codes for Professional, Technical and Managerial Occupations and Fashion Models

THREE-DIGIT OCCUPATIONAL GROUPS PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS AND FASHION MODELS

DRAFT

OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING

001 ARCHITECTURAL OCCUPATIONS
002 AERONAUTICAL ENGINEERING OCCUPATIONS
003 ELECTRICAL/ELECTRONIC ENGINEERING OCCUPATIONS
005 CIVIL ENGINEERING OCCUPATIONS
006 CERAMIC ENGINEERING OCCUPATIONS
007 MECHANICAL ENGINEERING OCCUPATIONS
008 CHEMICAL ENGINEERING OCCUPATIONS
010 MINING AND PETROLEUM ENGINEERING OCCUPATIONS
011 METALLURGY AND METALLURGICAL ENGINEERING OCCUPATIONS
012 INDUSTRIAL ENGINEERING OCCUPATIONS
013 AGRICULTURAL ENGINEERING OCCUPATIONS
014 MARINE ENGINEERING OCCUPATIONS
015 NUCLEAR ENGINEERING OCCUPATIONS
017 DRAFTERS
018 SURVEYING/CARTOGRAPHIC OCCUPATIONS
019 OTHER OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING

OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES

020 OCCUPATIONS IN MATHEMATICS
021 OCCUPATIONS IN ASTRONOMY
022 OCCUPATIONS IN CHEMISTRY
023 OCCUPATIONS IN PHYSICS
024 OCCUPATIONS IN GEOLOGY
025 OCCUPATIONS IN METEOROLOGY
029 OTHER OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES

COMPUTER-RELATED OCCUPATIONS

030 OCCUPATIONS IN SYSTEMS ANALYSIS AND PROGRAMMING
031 OCCUPATIONS IN DATA COMMUNICATIONS AND NETWORKS
032 OCCUPATIONS IN COMPUTER SYSTEM USER SUPPORT
033 OCCUPATIONS IN COMPUTER SYSTEMS TECHNICAL SUPPORT
039 OTHER COMPUTER-RELATED OCCUPATIONS

OCCUPATIONS IN LIFE SCIENCES

040 OCCUPATIONS IN AGRICULTURAL SCIENCES
041 OCCUPATIONS IN BIOLOGICAL SCIENCES
045 OCCUPATIONS IN PSYCHOLOGY
049 OTHER OCCUPATIONS IN LIFE SCIENCES

OCCUPATIONS IN SOCIAL SCIENCES

050 OCCUPATIONS IN ECONOMICS
051 OCCUPATIONS IN POLITICAL SCIENCE
052 OCCUPATIONS IN HISTORY
054 OCCUPATIONS IN SOCIOLOGY
055 OCCUPATIONS IN ANTHROPOLOGY
059 OTHER OCCUPATIONS IN SOCIAL SCIENCES

OCCUPATIONS IN MEDICINE AND HEALTH

070 PHYSICIANS AND SURGEONS
071 OSTEOPATHS
072 DENTISTS
073 VETERINARIANS
074 PHARMACISTS
076 THERAPISTS
077 DIETITIANS
078 OCCUPATIONS IN MEDICAL AND DENTAL TECHNOLOGY
079 OTHER OCCUPATIONS IN MEDICINE AND HEALTH

OCCUPATIONS IN EDUCATION

090 OCCUPATIONS IN COLLEGE AND UNIVERSITY EDUCATION
091 OCCUPATIONS IN SECONDARY SCHOOL EDUCATION
092 OCCUPATIONS IN PRESCHOOL, PRIMARY SCHOOL, AND KINDERGARTEN EDUCATION
094 OCCUPATIONS IN EDUCATION OF PERSONS WITH DISABILITIES
096 HOME ECONOMISTS AND FARM ADVISERS
097 OCCUPATIONS IN VOCATIONAL EDUCATION
099 OTHER OCCUPATIONS IN EDUCATION

OCCUPATIONS IN MUSEUM, LIBRARY, AND ARCHIVAL SCIENCES

100 LIBRARIANS
101 ARCHIVISTS
102 MUSEUM CURATORS AND RELATED OCCUPATIONS
109 OTHER OCCUPATIONS IN MUSEUM, LIBRARY AND ARCHIVAL SCIENCES

OCCUPATIONS IN LAW AND JURISPRUDENCE

110 LAWYERS
111 JUDGES
119 OTHER OCCUPATIONS IN LAW AND JURISPRUDENCE

OCCUPATIONS IN RELIGION AND THEOLOGY

120 CLERGY
129 OTHER OCCUPATIONS IN RELIGION AND THEOLOGY

OCCUPATIONS IN WRITING

131 WRITERS
132 EDITORS, PUBLICATION, BROADCAST, AND SCRIPT
139 OTHER OCCUPATIONS IN WRITING

OCCUPATIONS IN ART

141 COMMERCIAL ARTISTS: DESIGNERS AND ILLUSTRATORS, GRAPHIC ARTS
142 ENVIRONMENTAL, PRODUCT AND RELATED DESIGNERS
149 OTHER OCCUPATIONS IN ART

OCCUPATIONS IN ENTERTAINMENT AND RECREATION

152 OCCUPATIONS IN MUSIC
159 OTHER OCCUPATIONS IN ENTERTAINMENT AND RECREATION

OCCUPATIONS ADMINISTRATIVE SPECIALIZATIONS

160 ACCOUNTANTS, AUDITORS, AND RELATED OCCUPATIONS
161 BUDGET AND MANAGEMENT SYSTEMS ANALYSIS OCCUPATIONS
162 PURCHASING MANAGEMENT OCCUPATIONS
163 SALES AND DISTRIBUTION MANAGEMENT OCCUPATIONS
164 ADVERTISING MANAGEMENT OCCUPATIONS
165 PUBLIC RELATIONS MANAGEMENT OCCUPATIONS
166 PERSONNEL MANAGEMENT OCCUPATIONS
168 INSPECTORS AND INVESTIGATORS, MANAGERIAL AND PUBLIC SERVICE
169 OTHER OCCUPATIONS IN ADMINISTRATIVE OCCUPATIONS

MANAGERS AND OFFICIALS

180 AGRICULTURE, FORESTRY, AND FISHING INDUSTRY MANAGERS AND OFFICIALS
181 MINING INDUSTRY MANAGERS AND OFFICIALS
182 CONSTRUCTION INDUSTRY MANAGERS AND OFFICIALS
183 MANUFACTURING INDUSTRY MANAGERS AND OFFICIALS
184 TRANSPORTATION, COMMUNICATION, AND UTILITIES INDUSTRY MANAGERS AND OFFICIALS
185 WHOLESALE AND RETAIL TRADE MANAGERS AND OFFICIALS
186 FINANCE, INSURANCE AND REAL ESTATE MANAGERS AND OFFICIALS
187 SERVICE INDUSTRY MANAGERS AND OFFICIALS
188 PUBLIC ADMINISTRATION MANAGERS AND OFFICIALS
189 MISCELLANEOUS MANAGERS AND OFFICIALS

MISCELLANEOUS PROFESSIONAL, TECHNICAL, AND MANAGERIAL OCCUPATIONS

195 OCCUPATIONS IN SOCIAL AND WELFARE WORK
199 MISCELLANEOUS PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS

SALES PROMOTION OCCUPATIONS

297 FASHION MODELS

Federal Register

Wednesday
October 6, 1993

Part IV

Department of Commerce

Bureau of Export Administration

15 CFR Parts 773, 778, and 779
Commerce Control List; Interim Rule and
Final Rules

DEPARTMENT OF COMMERCE**Bureau of Export Administration****15 CFR Parts 773, 778, and 799****[Docket No. 930951-3251]****Expansion of General License GFW Eligibility for "Digital Computers" Controlled by ECCN 4A03A; Revision of Nuclear Non-Proliferation Controls in ECCNs 4A01A, 4A02A, and 4A03A; and Amendment of Nuclear Non-Proliferation Special Country List****AGENCY:** Bureau of Export Administration, Commerce.**ACTION:** Interim rule and request for comments.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export controls. This interim rule increases the General License GFW eligibility level for digital computers controlled by ECCN 4A03A from a CTP (composite theoretical performance) of 20 Mtops (million theoretical operations per second) or less to a CTP less than 195 Mtops. General License GFW is available for exports to most destinations in Country Groups T and V (except the People's Republic of China, Iran, Syria, and the South African military and police).

A validated export license continues to be required for exports of all computers controlled by ECCN 4A03A to Country Groups Q, S, W, Y, and Z, and the People's Republic of China, Iran, Syria, and the South African military and police. Exporters should also be aware that the Department of the Treasury maintains embargoes against other destinations, such as Iraq and the Federal Republic of Yugoslavia (Serbia and Montenegro).

This interim rule also raises the levels at which nuclear nonproliferation controls apply to digital computers controlled by ECCNs 4A01A, 4A02A, and 4A03A and revises the Nuclear Nonproliferation Special Country List.

This rule is expected to result in a significant reduction in the number of export license applications that will have to be submitted for computers controlled by 4A03A, thereby reducing the paperwork burden on exporters.

DATES: This rule is effective October 6, 1993. Comments must be received by November 5, 1993.

ADDRESSES: Written comments (six copies) should be sent to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export

Administration, Department of Commerce, room 4054, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Joseph Young, Office of Technology and Policy Analysis, Telephone: (202) 482-0706.

SUPPLEMENTARY INFORMATION:**Background**

This interim rule increases the General License GFW eligibility level for digital computers controlled by ECCN 4A03A, raises the levels at which nuclear nonproliferation controls apply to digital computers controlled by ECCN 4A03A, and revises the list of countries in Supplement No. 4 to part 778.

The General License GFW eligibility level for digital computers controlled by ECCN 4A03A is increased from a CTP (composite theoretical performance) of 20 Mtops (million theoretical operations per second) or less to a CTP less than 195 Mtops. This action is taken by the United States Government in view of the changed world situation, the rapid evolution of computer technology, and the increasing availability of high performance computers.

In international negotiations with our partner in the supercomputer regime, which will take place in October, we will propose raising the supercomputer definition from 195 to 2,000 Mtops. At the completion of those negotiations and with the raising of the supercomputer definition, we will raise the GFW level to 500 Mtops. In negotiations with our COCOM partners this fall, we will propose raising the decontrol level for sales to COCOM proscribed destinations to 500 Mtops, as well. As with the current liberalization, we do not expect these proposed changes to affect controls to the embargoed destinations or to those countries identified by the Secretary of State as supporting acts of international terrorism.

General License GFW was originally established for commodities described in the Advisory Notes in the Commerce Control List that indicate a likelihood of approval for Country Groups Q, W, and Y. However, GFW is also used for commodities not covered by such Advisory Notes when so indicated in the GFW paragraph under the Requirements heading of an entry.

Subject to the restrictions in § 771.2(c), items eligible for General License GFW may be exported to most destinations in Country Groups T and V. General License GFW is not available for exports to Iran, Syria, the People's Republic of China, or the South African military or police and a validated

license continues to be required for exports of all computers controlled by ECCN 4A03A to these destinations.

A validated export license also continues to be required for exports of all computers controlled by ECCN 4A03A to Country Groups Q, S, W, Y, and Z. Exporters should also be aware that the Department of the Treasury's Office of Foreign Assets Control maintains an embargo on other destinations, such as Iraq and the Federal Republic of Yugoslavia (Serbia and Montenegro).

Foreign policy-based validated license requirements remain in effect for exports to Iran or Syria of all computers controlled by ECCNs 4A03A and 4A94F. All other foreign policy-based validated license requirements also remain in effect.

This interim rule also raises the levels at which nuclear nonproliferation controls apply to digital computers controlled by ECCNs 4A01A, 4A02A, and 4A03A. Previously, nuclear nonproliferation controls applied to: (1) Supercomputers for countries listed in Supplement Nos. 2 and 8 to part 773, (2) computers with a CTP exceeding 41 Mtops for countries listed in Supplement No. 3 to part 773, and (3) computers with a CTP exceeding 12.5 Mtops for all other destinations. This rule revises nuclear nonproliferation controls to apply to computers with a CTP of 195 Mtops or more for countries listed in Supplement No. 4 to part 778 (as revised by this rule).

Finally, this rule revises the special country list in Supplement No. 4 to part 778 to include the following countries: Afghanistan, Albania, Algeria, Andorra, Angola, Burma, Comoros, Djibouti, Guyana, India, Iran, Iraq, Israel, Libya, Mauritania, Mozambique, Niger, Oman, Pakistan, St. Kitts, Tanzania, the United Arab Emirates, Vanuatu, Zambia, and Zimbabwe.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.
2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005, 0694-0010, 0694-0013, and 0694-0073.
3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.
4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be

given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close November 5, 1993. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration

Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Comeje, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482-5653.

List of Subjects

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements

15 CFR Part 799

Exports, Reporting and recordkeeping requirements

Accordingly, parts 778 and 799 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

1. The authority citation for 15 CFR part 778 is revised to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

2. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93-153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94-163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94-258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95-372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40); sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July

7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

PART 778—[AMENDED]

3. Supplement No. 4 to part 778 (Nuclear Non-Proliferation—Special Country List) is amended by removing "Argentina", "Bahrain", "Brazil", "Chile", "Kuwait", "Malawi", "Qatar", "Saudi Arabia", "South Africa", "Syria", and "Yemen Arab Republic".

PART 799—[AMENDED]

4. In supplement No. 1 to § 799.1 (the Commerce Control List), Category 4 (Computers), ECCN 4A01A is amended by revising the Requirements section to read as follows:

4A01A Electronic computers and related equipment, as follows, and "assemblies" and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ

Units: Computers and peripherals in number; parts and accessories in \$ value

Reason for Control: NS, MT, NP, FP (see Notes)

GLV: \$5,000 for 4A01.a only; \$0 for 4A01.b

GCT: Yes, except MT (see Notes) and except supercomputers as defined in § 776.11(a) of this subchapter (no supercomputer restriction for Japan)

GFW: No

Notes: 1. MT controls apply to 4A01.a.

2. NP controls apply to computers with a CTP of 195 Mtops or more to countries listed in supplement No. 4 to part 778 of this subchapter.

3. FP controls apply to all destinations, except Japan, for supercomputers (see § 776.11 of this subchapter).

* * * * *

5. In supplement No. 1 to § 799.1 (the Commerce Control List), Category 4 (Computers), ECCN 4A02A is amended by revising the Requirements section to read as follows:

4A02A "Hybrid computers", as follows, and "assemblies" and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ

Unit: Computers and peripherals in number; parts and accessories in \$ value

Reason for Control: NS, MT, NP, FP (see Notes)

GLV: \$5,000

GCT: Yes, except MT (see Notes) and except supercomputers as defined in § 776.11(a) of this subchapter (no supercomputer restriction for Japan)

GFW: No

Notes: 1. MT controls apply to hybrid computers combined with specially designed "software", for modeling, simulation, or design integration of complete rocket systems and unmanned air vehicle systems described in § 787.7 of this subchapter.

2. NP controls apply to computers with a CTP of 195 Mtops or more to countries listed in Supplement No. 4 to Part 778 of this subchapter.

3. FP controls apply to all destinations, except Japan, for supercomputers (see § 776.11 of this subchapter).

* * * * *

6. In supplement No. 1 to § 799.1 (the Commerce Control List), Category 4 (Computers), ECCN 4A03A is amended by revising the heading of the entry and by revising the Requirements section to read as follows:

4A03A "Digital computers", "assemblies", and related equipment therefor, as described in this entry, and specially designed components therefor.

Requirements

Validated License Required:
QSTVWYZ

Unit: Computers and peripherals in number; parts and accessories in \$ value

Reason for Control: NS, MT, NP, FP (see Notes)

GLV: \$5,000

GCT: Yes, except MT and FP, and except supercomputers as defined in § 776.11(a) of this subchapter (no supercomputer restriction for Japan); see Notes

GFW: Yes, except MT and FP, for equipment in Advisory Note 4 and for computers with a CTP less than 195 Mtops (see Notes)

Notes: 1. MT controls apply to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B05 or 9B06.

2. NP controls apply to computers with a CTP of 195 Mtops or more to countries listed in Supplement No. 4 to Part 778 of this subchapter.

3. FP controls apply to computers for computerized fingerprint equipment to all destinations except Australia, Japan, New Zealand and members of NATO.

4. FP controls apply to all destinations, except Japan, for supercomputers (see § 776.11 of this subchapter).

5. FP controls apply to Iran and Syria for computers controlled by 4A03A or 4A94F (i.e., computers with a CTP of 6 Mtops or greater). See § 785.4(d)(1) of this subchapter.

* * * * *

Dated: September 30, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93-24426 Filed 10-4-93; 8:54 am]

BILLING CODE 3510-DT-P

15 CFR Part 773

[Docket No. 930952-3252]

Special License Procedures; Revisions to Eligibility Requirements for Computers

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations (EAR) provide for a variety of "special licenses" that allow a broader range of activities than an individual validated license. These include the Distribution License, Project License, and Service Supply License, among others. The range of goods that can be exported under these procedures is broad, restricted only by a short list of exclusions. This rule revises the exclusion list to raise substantially the level of computers that can be exported under special licenses.

Systems defined as "supercomputers" are allowed under special licenses only to 12 designated countries. That restriction has not changed. In another rule published in this separate part of the *Federal Register*, nuclear nonproliferation controls on computers are revised to apply only to systems with a composite theoretical performance (CTP) of 195 MTOPS or above (million theoretical operations per second), and only to a short list of destinations. For those destinations subject to nuclear controls, special licenses may now be used for computers with a CTP less than 195 MTOPS. For countries that are neither among the 12 that may receive supercomputers nor subject to nuclear controls, special licenses may be used for any computers that are not "supercomputers." The effect of this change will be to greatly expand the usefulness of special licenses and reduce the number of individual validated licenses that will be required.

EFFECTIVE DATE: October 6, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah Kappler, Office of Export Licensing, Bureau of Export Administration, Department of Commerce; Telephone: (202) 482-5400.

SUPPLEMENTARY INFORMATION:

Background

Supplement No. 1 to part 773 of the EAR (15 CFR part 773) lists items that are not eligible for export under special licenses. For computers, paragraph (a) of the Supplement prohibits exports of supercomputers, except to Canada, Australia, Japan, and nine European countries. Supercomputers are defined in § 770.2 of the EAR. Paragraphs (1)(1) and (2) of the Supplement place restrictions on computers that are subject to nuclear non-proliferation controls. A change in nuclear controls for computers requires a revision of the special license restrictions.

Nuclear non-proliferation controls now apply only to computers with a CTP of 195 MTOPS or above that are destined for a country listed in supplement No. 4 to part 778. As a result, countries that are eligible for special licenses and are not in supplement No. 4 may receive computers under the Distribution License, subject only to the limit on supercomputers. Those countries within supplement No. 4 may receive computers under the Distribution License if the CTP is less than 195 MTOPS.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0002, 0694-0005, 0694-0006, 0694-0013, 0694-0015, and 0694-0073.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. Section 13(b) of the EAA does

not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 773

Exports, Reporting and recordkeeping requirements.

Accordingly, part 773 of the Export Administration Regulations (15 CFR parts 730-799) is amended as follows:

1. The authority citation for 15 CFR part 773 continues to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended, Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PART 773—[AMENDED]

2. In supplement no. 1 to part 773, paragraphs (1)(1) and (1)(2) are revised to read as follows:

**Supplement No. 1 to Part 773—
Commodities Excluded From the
Special License Procedures**

* * * * *

(1) * * *

(1) Electronic computers (other than supercomputers restricted by paragraph (a) of this supplement) may be exported under the Distribution License to destinations in supplement No. 4 to part 778 of this subchapter if they have a Composite Theoretical Performance (CTP) of less than 195 MTOPS (million theoretical operations per second).

Note: Computers that are not destined for countries in Supplement No. 4 to part 778 of this subchapter are *not* subject to nuclear non-proliferation controls. Such shipments under the Distribution License are restricted only by the supercomputer provisions of paragraph (a) of this Supplement.

(2) Computers subject to nuclear non-proliferation controls may be approved under the Project License procedure and Service Supply License on a case-by-case basis. Project License applicants should specify the types and sizes of computers and describe how they will be used in the project.

(3) * * *

* * * * *

Dated: September 30, 1993.

Iain S. Baird,
*Acting Assistant Secretary for Export
Administration.*

[FR Doc. 93-24427 Filed 10-4-93; 8:54 am]

BILLING CODE 3510-07-P

15 CFR Part 799

[Docket No. 930950-3250]

**Commerce Control List: Revisions to
Categories 3, 4, 5, and 6 Based on
COCOM Review, Expansion of
Favorable Consideration Treatment for
Country Group Q, and Expansion of
General License GFW Eligibility for
Category 5 Telecommunications Items**

AGENCY: Bureau of Export
Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in Categories 3, 4, 5, and 6 to conform with changes in the International Industrial List (IL) maintained by governments participating in the Coordinating Committee for Multilateral Export Controls (COCOM). The IL describes strategic items that are subject to multilateral export controls that restrict the availability of such items to controlled countries (i.e., Country Groups Q, W, Y, and Z and the People's Republic of China).

This rule also adds new Advisory Notes to Categories 1 through 9 that expand the number of items eligible for favorable consideration treatment for Country Group Q (i.e., Bulgaria, Latvia, Mongolia, and Romania).

In addition, this rule expands the number of items eligible for export under General License GFW to include all commodities that are controlled under any of the following telecommunications entries in Category 5: 5A02A, 5A03A, 5A04A, 5A05A, 5A06A, 5B01A, 5B02A, and 5C01A.

This rule is expected to result in a significant decrease in the number of applications for certain items (e.g., chips

and semiconductors), thereby reducing the paperwork burden on exporters.

EFFECTIVE DATE: October 6, 1993.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature, the following persons in the Office of Technology and Policy Analysis are available:

- Category 1: Jeff Tripp—(202) 482-1309
- Category 2: Surendra Dhir—(202) 482-5695
- Category 3: Jerald Beiter—(202) 482-1642
- Category 4: Joseph Young—(202) 482-0706
- Category 5: Dale Jensen—(202) 482-0730
- Category 6: Joseph Chuchla—(202) 482-1641
- Categories 7 and 9: Bruce Webb—(202) 482-3806
- Category 8: Steve Clagett—(202) 482-3550

SUPPLEMENTARY INFORMATION:

Background

This final rule revises a number of national security-controlled entries on the Commerce Control List (CCL) to conform with COCOM changes in the International Industrial List (IL), adds new Advisory Notes to Categories 1 through 9 to expand the number of items eligible for favorable consideration treatment for Country Group Q (i.e., Bulgaria, Latvia, Mongolia, and Romania), expands the number of items eligible for export under General License GFW to include most national security controlled telecommunications equipment in Category 5 (i.e., commodities described in 5A02A, 5A03A, 5A04A, 5A05A, 5A06A, 5B01A, 5B02A, or 5C01A), and makes editorial changes or corrections in certain entries and Advisory Notes on the CCL.

The following Export Control Commodity Numbers (ECCNs) on the CCL are revised to conform with recent COCOM changes in the IL.

3A01A—Amended to revise controls on certain general purpose integrated circuits (e.g., "microprocessor microcircuits", EEPROMs, SRAMs, field programmable gate arrays and field programmable logic arrays, and Fast Fourier Transform processors), travelling wave tubes, mixers and converters, acoustic wave devices, and high energy devices (e.g., batteries and "superconductive" electromagnets or solenoids)

3A02A—Amended to revise controls on recording equipment (e.g., digital instrumentation magnetic tape data recorders, equipment designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders, and waveform digitizers and transient recorders)

- 3B01A—Amended by: (1) Removing certain “stored program controlled” multifunctional focused ion beam systems and (2) revising controls on “stored program controlled” lithography equipment (i.e., align and expose step and repeat equipment for wafer processing)
- 3C02A—Amended by revising control language in 3C02.a to cover positive resists for semiconductor lithography specially adjusted (optimized) for use at wavelengths below 370 nm
- 3E02A—Amended to add technology for the “development” or “production” of substrates of films of diamond for electronic components
- 4A01A—Amended to increase the control level from a temperature of 343 K (70 C) or above to 358 K (85 C) or above
- 4A03A—Amended to increase the “maximum bit transfer rate” (“MBTR”) for disk drives from 25 Mbit/s to 47 Mbit/s
- 6A01A—Amended by: (1) Revising the Note preceding 6A01.a.1.a to indicate that the entry does not control acoustic emergency beacons or pingers specially designed for relocating or returning to an underwater position and (2) adding a new 6A01.a.2.d that controls heading sensors previously described in 6A01.a.2.b.4 and heading sensors having an accuracy of better than $\pm 0.5^\circ$ having an adjustable or removable depth sensing device that permits operation at depths exceeding 35 m
- 6A02A—Amended by: (1) Removing certain “space-qualified” solid-state detectors having a peak response in the wavelength range not exceeding 10 nm; (2) adding a Technical Note in 6A02.a.3 to clarify the term “focal plane arrays”; (3) removing certain non-“space-qualified” single-element or non-focal-plane multi-element semiconductor photodiodes or phototransistors having a peak response in the wavelength range exceeding 30,000 nm; (4) removing certain “multispectral imaging sensors” designed for airborne operation that have an Instantaneous-Field-of-View of less than 2.5 milliradians, and (5) revising 6A02.d.2 to control certain non-“space-qualified” cryocoolers with a cooling source temperature below 218 K (-55° C)
- 6A04A—Amended by revising 6A04.a.4 to limit controls on beam steering mirrors to those maintaining a flatness of $\lambda/2$ or better
- 6A08A—Amended by: (1) Revising the Note preceding 6A02.a to indicate that nothing in this entry controls meteorological (weather) radar; (2) revising the Note following 6A02.f to remove the paragraph stating that 6A02.f does not control meteorological radar; and (3) revising the Note following 6A08.i to indicate that 6A08.i does not control certain ground radar equipment specially designed for enroute air traffic control and “software” specially designed for the “use” thereof

- 6B04A—Amended by: (1) Adding a paragraph controlling equipment other than optical surface scattering measurement equipment having an unobscured aperture of more than 10 cm and specially designed for the non-contact optical measurement of a non-planar optical surface figure (profile) to an “accuracy” of 2 nm or less (better) against the required profile and (2) adding a Note at the end of 6B04 indicating that this entry does not control microscopes
- 6C02A—Amended by adding cadmium zinc telluride (CdZnTe)
- 6E03A—Amended by changing the unit for measuring resolution from line pairs per millimeter to line pairs per milliradian

This rule adds new Advisory Notes to CCL Categories 1 through 4 and Categories 6 through 9 to identify the items that are now eligible for favorable consideration treatment to Country Group Q (i.e., Bulgaria, Latvia, Mongolia, and Romania). In the telecommunications notes in Category 5, Advisory Note 17 is amended to provide favorable consideration treatment for exports of optical fiber cables and optical fiber transmission equipment or systems that permit telecommunications transmissions between points in Country Group Q. Such transmissions between controlled destinations were previously permitted only between points in Country Group W.

A new Advisory Note is added to Category 3 to provide administrative exceptions treatment for exports to Country Groups Q, W, and Y and the People’s Republic of China of storage integrated circuits controlled by ECCN 3A01.a.4.a or a.4.b.

In Category 4, the administrative exceptions level for exports to Country Groups Q, W, Y and the People’s Republic of China of disk drives and solid state storage equipment controlled by ECCN 4A03.e and input/output control units controlled by 4A03.f is raised from a “maximum bit transfer rate” (“MBTR”) not exceeding 36 Mbit/s to a “MBTR” not exceeding 110 Mbit/s.

This rule also amends the Technical Note at the end of Category 4 that provides guidance on calculating “composite theoretical performance” by revising the Note on calculating theoretical performance (TP) for a single “computing element” (CE).

In the telecommunications notes in Category 5, Advisory Note 3, which provides administrative exceptions treatment for exports to the People’s Republic of China of telecommunications transmission equipment controlled by ECCN 5A02.a, .b, or .d, is amended to indicate that an additional 2 Mbit/s may be added to the

168 Mbit/s limit on the “total digital transfer rate” to provide for operation, maintenance and service communications. Advisory Note 12 in Category 5 (telecommunications) is amended to specify that components and accessories controlled by ECCN 5A05A are eligible for administrative exceptions treatment to Country Groups Q, W, Y and the People’s Republic of China.

The Notes for Category 6 are revised to increase the number of items in ECCNs 6A02A, 6B04A, 6C02A, and 6C04A that are eligible for administrative exceptions treatment to Country Group W. Administrative exceptions treatment is also provided for exports of reasonable quantities of items controlled by ECCN 6B04.b to Country Groups Q, Y and the People’s Republic of China for civil end-uses.

This rule also makes a number of editorial clarifications and corrections. ECCN 3E01A is amended by revising the GTDR paragraph in the Requirements section to clarify that General License GTDR may not be used to export technology controlled by 3E01A that is subject to missile technology controls. Certain minor editorial changes are made in ECCNs 5E02A, 5A11A, and 6A07A. ECCNs 6A05A and 6C04A are amended by revising the GFW paragraphs in the Requirements section of each entry to correctly reference the applicable Advisory Notes. In Category 5, under the heading “Notes for Telecommunications”, this rule makes editorial changes to Advisory Notes 5, 6, 8, 10, 15, 16, and 19 through 22.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005, 0694-0007, and 0694-0010. This rule also contains collections of information that have been approved under control numbers 0694-0013 and 0694-0078. Public burden for the collections approved under control number 0694-0013 is estimated to average 2 hours per year for the signed statement from the importing agency or end-user’s representative and 1 hour per year for addition information describing the equipment to be exported, its application, and all end-users and their activities. Public burden for the collections approved under control number 0694-0078 is estimated to average 15 minutes per year for repair facility records, 15.25 hours per year for

preparing reports on inspections of telecommunications systems, 15.25 hours per year for complying with licensing conditions as contractually agreed between the licensee and operators on each end of the telecommunications link, and 30.25 hours per year for preparing telecommunications system plans. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Washington, DC 20503—Attn: Paperwork Reduction Project (0694-0013 or 0694-0078).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730-799) is amended as follows:

PART 799—[AMENDED]

1. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93-153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94-163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94-258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95-372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40); sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

Supplement No. 1 to § 799.1— [Amended]

Make the following amendments to Supplement No. 1 to § 799.1 (Commerce Control List):

1. In Category 1 (Materials), under the heading "Notes for Category 1" following ECCN 1E96G, redesignate the Advisory Note as Advisory Note 1 and add a new Advisory Note 2 to read as follows:

Notes for Category 1

Advisory Note 1: * * *

Advisory Note 2: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of the items controlled by Category 1 for national security reasons, *except*:

a. "Composite" structures or laminates controlled by 1A02.a, when specially designed for stealth or space applications, or by 1A02.b;

b. Filament winding machines controlled by 1B01.a;

c. Tape-laying machines controlled by 1B01.b;

d. "Fibrous or filamentary materials" controlled by 1C10.a, 1C10.c, 1C10.d, or 1C10.e;

e. "Software" specially designed and technology "required" for the equipment or materials described in this Advisory Note that are controlled for national security reasons by Category 1D or 1E.

2. In Category 2 (Materials Processing), under the heading "Notes for Category 2" following ECCN 2E96G, Advisory Note 3, Advisory Note 4, and Advisory Note 5 are redesignated as Advisory Note 5, Advisory Note 3, and Advisory Note 4, respectively, and a new Advisory Note 6 is added immediately following newly designated Advisory Note 5 to read as follows:

Notes for Category 2

* * * * *

Advisory Note 6: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of the items controlled by Category 2 for national security reasons, *except*:

a. "Numerical control" units, "numerically controlled" machine tools with a positioning accuracy of 2 micrometers or better, and components, specially designed parts or assemblies therefor, controlled by 2B01, 2B08, or 2B09;

b. Non-"numerically controlled" machine tools for generating optical quality surfaces controlled by 2B02;

c. Equipment specially designed for the deposition, processing and in-process control of inorganic overlays, coatings and surface modifications controlled by 2B05;

d. Coating technology for non-electronic devices controlled by 2E03.d;

e. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 6.a, .b, or .c that are controlled by 2D or 2E.

3. In Category 3 (Electronics Design, Development and Production), the Notes immediately following the heading "A. Equipment, Assemblies and Components" are revised and ECCNs 3A01A and 3A02A are amended by revising the List of Items Controlled in each entry to read as follows:

A. Equipment, Assemblies and Components

Note 1: The control status of equipment, devices and components described in Category 3A, other than those described in 3A01.a.3 to a.10 or 3A01.a.12, that are specially designed for or have the same functional characteristics as other equipment is determined by the control status of the other equipment.

Note 2: The control status of integrated circuits described in 3A01.a.3 to a.9 or 3A01.a.12 that are unalterably programmed or designed for a specific function for other equipment is determined by the control status of the other equipment.

N.B. When the manufacturer or applicant cannot determine the control status of the other equipment, the control status of the integrated circuits is determined in 3A01.a.3 to a.9 or 3A01.a.12. If the integrated circuit is a silicon-based "microcomputer microcircuit" or a microcontroller microcircuit described in 3A01.a.3 having an operand (data) word length of 8 bits or less, the control status of the integrated circuit is determined in 3A01.a.3.

3A01A Electronic devices and components.

* * * * *

List of Items Controlled

a. General purpose integrated circuits, as follows:

Note 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A01.a.

Note 2: Integrated circuits include the following types:

"Monolithic integrated circuits";
 "Hybrid integrated circuits";
 "Multichip integrated circuits";
 "Film type integrated circuits", including silicon-on-sapphire integrated circuits;
 "Optical integrated circuits".

a.1. Integrated circuits, designed or rated as radiation hardened to withstand either of the following:

a.1.a. A total dose of 5×10^5 Rads (Si), or higher; or

a.1.b. A dose rate upset of 5×10^8 Rads (Si)/s or higher;

(For integrated circuits designed or rated against neutron or transient ionizing radiation, see the ITAR.)

a.2. Integrated circuits described in 3A01.a.3 to a.10 or 3A01.a.12, as follows:

a.2.a. Rated for operation at an ambient temperature above 398 K (+125° C);

a.2.b. Rated for operation at an ambient temperature below 218 K (-55° C); or

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (-55° C) to 398 K (+125° C);

Note: 3A01.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

a.3. "Microprocessor microcircuits", "microcomputer microcircuits" and microcontroller microcircuits, having any of the following:

Note: 3A01.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. An external data bus width exceeding 32 bit or an arithmetic logic unit with an access width exceeding 32 bit;

a.3.b. A clock frequency exceeding 40 MHz;

a.3.c. An external data bus width of 32 bit or more and capable of executing 12.5 million instructions per second (MIPS) or more; or

Technical Note: If MIPS are not specified, the inverse of the average instruction cycle time (in microseconds) should be used.

a.3.d. More than one data or instruction bus or serial communication port for external interconnection in a parallel processor with a transfer rate exceeding 2.5 Mbyte/s;

a.4. Electrically erasable programmable read-only memories (EEPROMs), static random-access memories (SRAMs), and storage integrated circuits manufactured from a compound semiconductor, as follows:

a.4.a. Electrically erasable programmable read-only memories (EEPROMs) with a storage capacity:

a.4.a.1. Exceeding 16 Mbit per package for flash memory types; or

a.4.a.2. Exceeding either of the following limits for all other EEPROM types:

a.4.a.2.a. 4 Mbit per package; or

a.4.a.2.b. 1 Mbit per package and having a maximum access time of less than 80 ns;

a.4.b. Static random-access memories (SRAMs) with a storage capacity:

a.4.b.1. Exceeding 4 Mbit per package; or

a.4.b.2. Exceeding 1 Mbit per package and having a maximum access time of less than 20 ns;

a.4.c. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bits or more, but less than 12 bits, with a total conversion time to maximum resolution of less than 10 ns;

a.5.a.2. A resolution of 12 bits with a total conversion time to maximum resolution of less than 200 ns; or

a.5.a.3. A resolution of more than 12 bits with a total conversion time to maximum resolution of less than 2 microseconds;

a.5.b. Digital-to-analog converters with a resolution of 12 bits or more, and a "settling time" of less than 10 ns;

a.6. Electro-optical or "optical integrated circuits" for "signal processing" having all of the following:

a.6.a. One or more internal "laser" diodes;

a.6.b. One or more internal light detecting elements; and

a.6.c. Optical waveguides;

a.7. Field programmable gate arrays having either of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates); or

a.7.b. A typical "basic gate propagation delay time" of less than 0.4 ns;

a.8. Field programmable logic arrays having either of the following:

a.8.a. An equivalent usable gate count of more than 30,000 (2 input gates); or

a.8.b. A toggle frequency exceeding 133 MHz;

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 144 terminals;

a.10.b. A typical "basic gate propagation delay time" of less than 0.4 ns; or

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A01.a.3 to a.10 or 3A01.a.12, based upon any compound semiconductor and having either of the following:

a.11.a. An equivalent gate count of more than 300 (2 input gates); or

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having any of the following characteristics:

a.12.a. A rated execution time for a 1,024-point complex FFT of less than 1 ms;

a.12.b. A rated execution time for an N-point complex FFT of other than 1,024 points of less than $N \log_2 N / 10,240$ ms, where N is the number of points; or

a.12.c. A butterfly throughput of more than 5.12 MHz;

b. Microwave or millimeter wave devices:

b.1. Electronic vacuum tubes and cathodes, as follows:

(For frequency agile magnetron tubes, see ITAR Category 11.)

Note: 3A01.b.1 does not control tubes designed or rated to operate in the Standard Civil Telecommunications Bands at frequencies not exceeding 31 GHz.

b.1.a. Travelling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies higher than 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with an "instantaneous bandwidth" of more than 7 percent or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An "instantaneous bandwidth" of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An "instantaneous bandwidth" of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; or

b.1.a.4.c. "Space qualified";

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes for electronic tubes, with either of the following:

b.1.c.1. A turn on time to rated emission of less than 3 seconds; or
 b.1.c.2. Producing a continuous emission current density at rated operating conditions exceeding 5 A/cm²;

b.2. Microwave integrated circuits or modules containing "monolithic integrated circuits" operating at frequencies exceeding 3 GHz;

Note: 3A01.b.2 does not control circuits or modules for equipment designed or rated to operate in the Standard Civil Telecommunications Bands at frequencies not exceeding 31 GHz.

b.3. Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers:
 b.4.a. Operating at frequencies exceeding 10.5 GHz and having an "instantaneous bandwidth" of more than half an octave; or
 b.4.b. Operating at frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 microseconds with either:
 b.5.a. A band-pass bandwidth of more than 0.5 percent of center frequency; or
 b.5.b. A band-stop bandwidth of less than 0.5 percent of center frequency;

b.6. Microwave assemblies capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A02.c, 3A02.e or 3A02.f beyond the control limits stated therein;

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (i.e., "signal processing" devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency of 2.5 GHz or less, and:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in microseconds and bandwidth in MHz) of more than 100; or

c.1.b.3. A dispersive delay of more than 10 microseconds; or

c.1.c. A carrier frequency exceeding 1 GHz and a bandwidth of 250 MHz or more;

c.2. Bulk (volume) acoustic wave devices (i.e., "signal processing"

devices employing elastic waves) which permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic "signal processing" devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves which permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices or circuits containing components, manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of the "superconductive" constituents, with any of the following:

d.1. Electromagnetic amplification:

d.1.a. At frequencies equal to or less than 31 GHz with a noise figure of less than 0.5 dB; or

d.1.b. At frequencies exceeding 31 GHz;

d.2. Current switching for digital circuits using "superconductive" gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; or

d.3. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries, as follows:

Note: 3A01.e.1 does not control batteries with volumes equal to or less than 26 cm³ (e.g., standard C-cells or UM-2 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (-30° C) to above 343 K (70° C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (-20° C) to above 333 K (60° C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. "Space qualified" and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m² at an operating temperature of 301 K (28° C) under a tungsten illumination of 1 kW/m² at 2,800 K (2,527° C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; and

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; and

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. "Superconductive" electromagnets or solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

Note: 3A01.e.3. does not control "superconductive" electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; and

e.3.c. Rated for a magnetic induction of more than 8 T or "overall current density" in the winding of more than 300 A/mm²;

e.4. Circuits or systems for electromagnetic energy storage, containing components manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of their "superconductive" constituents, having all of the following:

e.4.a. Resonant operating frequencies exceeding 1 MHz;

e.4.b. A stored energy density of 1 MJ/m³ or more; and

e.4.c. A discharge time of less than 1 ms;

e.5. Flash discharge type X-ray systems, and tubes therefore, having all of the following:

e.5.a. A peak power exceeding 500 MW;

e.5.b. An output voltage exceeding 500 kV; and

e.5.c. A pulse width of less than 0.2 microsecond;

f. Rotary input type shaft absolute position encoders having either of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; or

f.2. An accuracy better than ± 2.5 seconds of arc.

Related ECCN: * * *

3A02A General purpose electronic equipment.

* * * * *

List of Items Controlled

a. Recording equipment, as follows, and specially designed test tape therefor:

a.1. Analog instrumentation magnetic tape recorders, including those permitting the recording of digital signals (e.g., using a high density digital recording (HDDR) module), having any of the following:

a.1.a. A bandwidth exceeding 4 MHz per electronic channel or track;

a.1.b. A bandwidth exceeding 2 MHz per electronic channel or track and having more than 42 tracks; or

a.1.c. A time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of less than ± 0.1 microsecond;

a.2. Digital video magnetic tape recorders having a maximum digital interface transfer rate exceeding 180 Mbit/s, except those specially designed for television recording using a signal format standardized or recommended by the CCIR or the IEC for civil television applications;

a.3. Digital instrumentation magnetic tape data recorders employing helical scan techniques or fixed head techniques, having either of the following characteristics:

a.3.a. A maximum digital interface transfer rate exceeding 175 Mbit/s; or

a.3.b. "Space qualified";

Note: 3A02.a.3 does not control analog magnetic tape recorders equipped with HDDR conversion electronics and configured to record only digital data.

a.4. Equipment, with a maximum digital interface transfer rate exceeding 175 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

a.5. Waveform digitizers and transient recorders with both of the following characteristics:

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more; and

a.5.b. A continuous throughput of 2 Gbits/s or more;

Technical Note: For those instruments with a parallel bus architecture, the continuous throughput rate is the highest word rate multiplied by the number of bits in a word. Continuous throughput is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

b. "Frequency synthesizer" "assemblies" having a "frequency switching time" from one selected frequency to another of less than 1 ms;

c. "Signal analyzers", as follows:

c.1. Capable of analyzing frequencies exceeding 31 GHz;

c.2. "Dynamic signal analyzers" with a "real-time bandwidth" exceeding 25.6 kHz, except those using only constant percentage bandwidth filters (also known as octave or fractional octave filters);

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master frequency, and having any of the following:

d.1. A maximum synthesized frequency exceeding 31 GHz;

d.2. A "frequency switching time" from one selected frequency to another of less than 1 ms; or

d.3. A single sideband (SSB) phase noise better than $-(126+20 \log_{10} F - 20 \log_{10} f)$ in dBc/Hz, where F is the off-set from the operating frequency in Hz and f is the operating frequency in MHz;

Note: 3A02.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

e. Network analyzers with a maximum operating frequency exceeding 31 GHz;

Note: 3A02.e does not control "swept frequency network analyzers" with a maximum operating frequency not exceeding 40 GHz and which do not contain a data bus for remote control interfacing.

f. Microwave test receivers with both of the following:

f.1. A maximum operating frequency exceeding 31 GHz; and

f.2. The capability of measuring amplitude and phase simultaneously;

g. Atomic frequency standards having either of the following characteristics:

g.1. Long term stability (aging) less (better) than 1×10^{-11} /month; or

g.2. "Space qualified";

Note: 3A02.g.1 does not control non-"space qualified" rubidium standards.

h. Emulators for microcircuits controlled by 3A01.a.3 or 3A01.a.9.

Note: 3A02.h does not control emulators designed for a "family" that contains at least one device not controlled by 3A01.a.3 or 3A01.a.9.

4. In Category 3 (Electronics Design, Development and Production), ECCN 3B01A is amended by revising the List of Items controlled to read as follows:

3B01A Equipment for the manufacture or testing of semiconductor devices or materials, as follows, and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

a. "Stored program controlled" equipment for epitaxial growth, as follows:

a.1. Capable of producing a layer thickness uniform to less than $\pm 2.5\%$ across a distance of 75 mm or more;

a.2. Metal organic chemical vapour deposition (MOCVD) reactors specially designed for compound semiconductor crystal growth by the chemical reaction between materials controlled by 3C03 or 3C04;

a.3. Molecular beam epitaxial growth equipment using gas sources;

b. "Stored program controlled" equipment designed for ion implantation, having any of the following:

b.1. An accelerating voltage exceeding 200 keV;

b.2. Specially designed and optimized to operate at accelerating voltages of less than 10 keV;

b.3. Direct write capability; or

b.4. Capable of high energy oxygen implant into a heated semiconductor material "substrate";

c. "Stored program controlled" anisotropic plasma dry etching equipment, as follows:

c.1. With cassette-to-cassette operation and load-locks, and having either of the following:

c.1.a. Magnetic confinement; or

c.1.b. Electron cyclotron resonance (ECR);

c.2. Specially designed for equipment controlled by 3B01.e and having either of the following:

c.2.a. Magnetic confinement; or

c.2.b. Electron cyclotron resonance (ECR);

d. "Stored program controlled" plasma enhanced CVD equipment, as follows:

d.1. With cassette-to-cassette operation and load-locks, and having either of the following:

d.1.a. Magnetic confinement; or

d.1.b. Electron cyclotron resonance (ECR);

d.2. Specially designed for equipment controlled by 3B01.e and having either of the following:

d.2.a. Magnetic confinement; or

d.2.b. Electron cyclotron resonance (ECR);

e. "Stored program controlled" automatic loading multi-chamber central wafer handling systems, having interfaces for wafer input and output, to

which more than two pieces of semiconductor processing equipment are to be connected, to form an integrated system in a vacuum environment for sequential multiple wafer processing;

Note: 3B01.e does not control automatic robotic wafer handling systems not designed to operate in a vacuum environment.

f. "Stored program controlled" lithography equipment, as follows:

f.1. Align and expose step and repeat equipment for wafer processing using

photo-optical or X-ray methods, having any of the following:

f.1.a. A light source wavelength shorter than 400 nm; or

f.1.b. Capable of producing a pattern with a minimum resolvable feature size of 0.7 micrometers or less when calculated by the following formula:

$$MRF = \frac{(\text{an exposure light source wavelength in } \mu\text{m}) \times (\text{K factor})}{\text{numerical aperture}}$$

where the K factor = 0.7.

MRF=minimum resolvable feature size.

f.2. Equipment specially designed for mask making or semiconductor device processing using deflected focussed electron beam, ion beam or "laser" beam, with any of the following:

f.2.a. A spot size smaller than 0.2 micrometer;

f.2.b. Capable of producing a pattern with a feature size of less than 1 micrometer; or

f.2.c. An overlay accuracy of better than ±0.20 micrometer (3 sigma);

g. Masks or reticles, as follows:

g.1. For integrated circuits controlled by 3A01;

g.2. Multi-layer masks with a phase shift layer;

h. "Stored programme controlled" test equipment, specially designed for testing semiconductor devices and unencapsulated dice, as follows:

h.1. For testing S-parameters of transistor devices at frequencies exceeding 31 GHz;

h.2. For testing integrated circuits capable of performing functional (truth table) testing at a pattern rate of more than 40 MHz;

Note: 3B01.h.2 does not control test equipment specially designed for testing:

a. "assemblies" or a class of "assemblies" for home or entertainment applications;

b. Uncontrolled electronic components, "assemblies" or integrated circuits.

h.3. For testing microwave integrated circuits at frequencies exceeding 3 GHz;

Note: 3B01.h.3 does not control test equipment specially designed for testing microwave integrated circuits operating solely in the Standard Civil Telecommunication Bands at frequencies not exceeding 31 GHz.

h.4. Electron beam systems designed for operation at 3 keV or below, or "laser" beam systems, for the non-contactive probing of powered-up semiconductor devices, with both of the following:

h.4.a. Stroboscopic capability with either beam-blanking or detector strobing; and

h.4.b. An electron spectrometer for voltage measurement with a resolution of less than 0.5 V;

Note: 3B01.h.4 does not control scanning electron microscopes, except when specially designed and instrumented for the non-contactive probing of powered-up semiconductor devices.

5. In Category 3 (Electronics Design, Development and Production), ECCN 3C02A is amended by revising the List of Items Controlled to read as follows:

3C02A Resist materials, and "substrates" coated with controlled resists.

* * * * *

List of Items Controlled

a. Positive resists for semiconductor lithography specially adjusted (optimized) for use at wavelengths below 370 nm;

b. All resists, for use with electron beams or ion beams, with a sensitivity of 0.01 microcoulomb/mm² or better;

c. All resists, for use with X-rays, with a sensitivity of 2.5 mJ/mm² or better;

d. All resists optimized for surface imaging technologies, including silyated resists.

Technical Note: Silyation techniques are defined as processes incorporating oxidation of the resist surface to enhance performance for both wet and dry developing.

6. In Category 3 (Electronics Design, Development and Production), ECCN 3E01A is revised and ECCN 3E02A is amended by revising the List of Items Controlled to read as follows:

3E01A Technology according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 3A01, 3A02, 3B01, 3C01, 3C02, 3C03, or 3C04.

Requirements

Validated License Required:

QSTVWYZ

Unit: \$ value

Reason for Control: NS and MT (see Notes)

GTDR: Yes, except MT (see Notes)

GTDU: No

Note 1: MT controls apply to technology specially designed for the "development" or "production" of items described in 3A01.a.1.

Note 2: 3E01 does not control technology for the "development" or "production" of:

a. Microwave transistors operating at frequencies below 31 GHz;

b. Integrated circuits controlled by 3A01.a.3 to a.12, having both of the following characteristics:

1. Using technology of one micrometer or more, and

2. Not incorporating multi-layer structures.

N.B.: This Note does not preclude the export of multilayer technology for devices incorporating a maximum of two metal layers and two polysilicon layers.

3E02A Other technology for the "development" or "production" of commodities described in this entry.

* * * * *

List of Items Controlled

Technology for the "development" or "production" of the following commodities:

a. Vacuum microelectronic devices;

b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well or super lattice devices;

c. "Superconductive" electronic devices;

d. Substrates of films of diamond for electronic components.

7. In Category 3 (Electronics Design, Development and Production), under the heading "Notes for Category 3", Advisory Notes 1 and 3 are revised and new Advisory Notes 4 and 5 are added to read as follows:

Notes for Category 3

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of the items controlled by Category 3 for national security reasons, except equipment controlled by 3B01.a.2, 3B01.a.3, 3B01.f.1, or 3B01.f.2, and "software" specially designed and technology "required" therefor controlled by 3D or 3E.

Advisory Note 2: * * *

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for

exports to satisfactory end-users in Country Groups Q, W, Y, and the People's Republic of China of items controlled by 3A01.a.4.a or a.4.b.

Advisory Note 4: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of equipment controlled by 3B01.f.2 and "software" specially designed and technology "required" therefor controlled by 3D or 3E.

Advisory Note 5: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of items controlled by Category 3 for national security reasons, except equipment controlled by 3B01.a.2, 3B01.a.3, 3B01.f.1, or 3B01.f.2, and "software" specially designed and technology "required" therefor controlled by 3D or 3E.

8. In Category 4 (Computers), ECCN 4A01A is amended by revising the heading of the entry and by revising the "List of Items Controlled" to read as follows:

4A01A Electronic computers and related equipment, as described in this entry, and "assemblies" and specially designed components therefor.

* * * * *

List of Items Controlled

Electronic computers and related equipment, as follows, and "assemblies" and specially designed components therefor:

a. Specially designed to have either of the following characteristics:

a.1. Rated for operation at an ambient temperature below 228 K (-45° C) or above 358 K (85° C);

Note: The temperature limits in 4A01.a.1. do not apply to computers specially designed for civil automobile and railway train applications.

a.2. Radiation-hardened to exceed any of the following specifications:

a.2.a. Total Dose 5 x 10⁵ Rads (Si);
a.2.b. Dose Rate Upset 5 x 10⁸ Rads (Si)/sec; or

a.2.c. Single Event Upset 1 x 10⁻⁷ Error/bit/day;

Note: Equipment designed or rated for transient ionizing radiation is controlled by the ITAR.

b. Having characteristics or performing functions exceeding the limits in the "information security" entries in Category 5.

Related ECCNs: * * *

9. In Category 4 (Computers), ECCN 4A03A is amended by revising the "List of Items Controlled" to read as follows:

4A03A "Digital computers", "assemblies", and related equipment therefor, as described in this entry, and specially designed components therefor.

* * * * *

List of Items Controlled

Note 1: 4A03 includes vector processors, array processors, logic processors, and equipment for "image enhancement" or signal processing".

Note 2: The control status of the "digital computers" or related equipment described in 4A03 is governed by the control status of other equipment or systems provided:

a. The "digital computers" or related equipment are essential for the operation of the other equipment or systems;

b. The "digital computers" or related equipment are not a "principal element" of the other equipment or systems; and

N.B. 1: The control status of "signal processing" or "image enhancement" equipment described in 4A03.g and specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the "principal element" criterion.

N.B. 2: For the control status of "digital computers" or related equipment for telecommunications equipment, see the telecommunications entries in Category 5.

c. The technology for the "digital computers" and related equipment is governed by 4E.

Note 3: "Digital computers" or related equipment are not controlled by 4A03 provided:

a. They are essential for medical applications;

b. The equipment is substantially restricted to medical applications by nature of its design and performance;

c. The equipment does not have "user-accessible programmability" other than that allowing for insertion of the original or modified "programs" supplied by the original manufacturer;

d. The "composite theoretical performance" of any "digital computer" that is not designed or modified but essential for the medical application does not exceed 20 million composite theoretical operations per second (Mtops); and

e. The technology for the "digital computers" or related equipment is governed by 4E.

"Digital computers", "assemblies", and related equipment therefor, as follows, and specially designed components therefor:

a. Designed for combined recognition, understanding and interpretation of image or continuous (connected) speech;

b. Designed or modified for "fault tolerance";

Note: For the purposes of 4A03.b, "digital computers" and related equipment are not considered to be designed or modified for "fault tolerance", if they use:

1. Error detection or correction algorithms in "main storage";

2. The interconnection of two "digital computers" so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;

3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; or

4. The synchronization of two central processing units by "software" so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

c. "Digital computers" having a "composite theoretical performance" ("CTP") exceeding 12.5 million theoretical operations per second (Mtops);

d. "Assemblies" specially designed or modified to enhance performance by aggregation of "computing elements", as follows:

d.1. Designed to be capable of aggregation in configurations of 16 or more "computing elements"; or

d.2. Having a sum of maximum data rates on all data channels available for connection to associated processors exceeding 40 MBytes/s;

Note 1: 4A03.d applies only to "assemblies" and programmable interconnections not exceeding the limits in 4A03.c, when shipped as unintegrated "assemblies". It does not apply to "assemblies" inherently limited by nature of their design for use as related equipment controlled by 4A03.e to 4A03.k.

Note 2: 4A03.d does not control "assemblies" specially designed for a product or family of products whose maximum configuration does not exceed the limits of 4A03.c.

e. Disk drives and solid state storage equipment:

e.1. Magnetic, erasable optical or magneto-optical disk drives with a "maximum bit transfer rate" ("MBTR") exceeding 47 Mbit/s;

e.2. Solid state storage equipment, other than "main storage" (also known as solid state disks or RAM disks), with a "maximum bit transfer rate" ("MBTR") exceeding 80 Mbit/s;

f. Input/output control units designed for use with equipment controlled by 4A03.e;

g. Equipment for "signal processing" or "image enhancement" having a "composite theoretical performance" ("CTP") exceeding 8.5 million theoretical operations per second (Mtops);

h. Graphics accelerators or graphics coprocessors exceeding a "3-D Vector Rate" of 400,000 or, if supported by 2-D vectors only, a "2-D vector rate" of 600,000;

Note: The provisions of 4A03.h do not apply to work stations designed for and limited to:

- 1. Graphic arts (e.g., printing, publishing); and
- 2. The display of two-dimensional vectors.

i. Color displays or monitors having more than 12 resolvable elements per mm in the direction of the maximum pixel density;

Note 1: 4A03.i does not control displays or monitors not specially designed for electronic computers.

Note 2: Displays specially designed for air traffic control (ATC) systems are treated as specially designed components for ATC systems under Category 6.

j. Equipment performing analog-to-digital or digital-to-analog conversions exceeding the limits in 3A01.a.5;

k. Equipment containing "terminal interface equipment" exceeding the limits in 5A02.c;

Note: For the purposes of 4A03.k, "terminal interface equipment" includes "local area network" interfaces, modems and other communications interfaces. "Local area network" interfaces are evaluated as "network access controllers".

10. In Category 4 (Computers), following ECCN 4E96G, under the heading "Notes for Category 4", Advisory Notes 1, 3, 4, 5, and 6 are revised and a new Advisory Note 7 is added to read as follows:

Notes for Category 4

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled by Category 4 for national security reasons, except:

- a. Computers controlled by 4A01 or 4A02;
- b. "Digital computers" controlled by 4A03.c having a "CTP" exceeding 41 Mtops and specially designed components therefor;
- c. Computers controlled by 4A04, and specially designed related equipment, "assemblies" and components therefor;
- d. "Software" specially designed and technology "required" for the equipment described in .a., .b. or .c of this Advisory Note that are controlled by 4D or 4E.

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "digital computers" controlled by 4A03.c. or specially designed components therefor, and "software" controlled by 4D01, provided that:

- a. They will be operated by civil end-users for civil applications;
- b. They have been primarily designed and used for non-strategic applications;
- c. The "CTP" of the "digital computers" does not exceed 20 Mtops;
- d. They do not contain any related equipment controlled for national security reasons;
- e. When exported as enhancements, the enhanced "digital computer" does not exceed the limit in this Advisory Note 3.c;

f. They are not exported as enhancements to computers designed within Country Groups QWY or the People's Republic of China;

Note: This does not preclude the enhancement of such computers when they are used by civil end-users in civil applications.

g. Any controlled "software" is the minimum required for the "use" of the approved "digital computers";

h. Exports of items covered by this Advisory Note 3 shall be subject to the following restrictions:

- 1. The equipment will be used primarily for the specific non-strategic application for which the export has been approved; and
- 2. The equipment will not be used for the design, development, or production of items controlled for national security reasons.

Advisory Note 4: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of equipment controlled by 4A03.e or .f provided that:

- a. The "maximum bit transfer rate" ("MBTR") does not exceed 110 million bit/s;
- b. The equipment is exported as part of a computer system or as an enhancement to a previously exported system;
- c. License applications for exports of items covered by this Advisory Note are subject to a 30-day COCOM notification period prior to export if the "maximum bit transfer rate" ("MBTR") of the equipment exceeds 65 Mbit/s; and
- d. Exports of items covered by this Advisory Note shall be subject to the following restrictions:

- 1. The equipment will be used primarily for the specific non-strategic application for which the export has been approved; and
- 2. The equipment will not be used for the design, development or production of items controlled for national security reasons.

Advisory Note 5: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of the following:

- a. "Hybrid computers" controlled by 4A02, when not combined with specially designed "software" for modelling simulation or design integration for complete rocket systems and unmanned air vehicle systems;
- b. Computers controlled by 4A04, and specially designed related equipment, "assemblies" and components therefor;
- c. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 5.a or .b that are controlled by 4D or 4E.

Advisory Note 6: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "digital computers" or related equipment therefor controlled by 4A03.c, .e, .f, or .g, or "software" controlled by 4D01, provided that:

- a. They will be operated by civil end-users for civil applications;
- b. They have been primarily designed and used for non-strategic applications;
- c. They do not exceed any of the following limits:

1. "CTP" of the "digital computers"—23 Mtops;

2. "Maximum bit transfer rate" ("MBTR") of disk drives or input/output control units controlled by 4A03.e or 4A03.f - 110 Mbit/s; or

3. "CTP" of the "signal processing" or "image enhancement" equipment—12.5 Mtops;

d. They do not contain any other related equipment controlled for national security reasons;

e. When exported as enhancements, the enhanced "digital computer" does not exceed the limit in this Advisory Note 6.c;

f. They are not shipped as enhancements to computers designed within Country Groups QWY or the People's Republic of China;

g. Any controlled "software" is the minimum required for the "use" of the approved "digital computers" and related equipment;

h. Exports of items covered by this Advisory Note 6 shall be subject to the following restrictions:

1. A signed statement must be submitted by a responsible representative of the end-user(s) or the importing agency describing the end-use and certifying that:

a. The "digital computers" or related equipment will:

- 1. Be used only for civil applications; and
- 2. Not be reexported or otherwise disposed of without prior written authorization from the Office of Export Licensing;

b. Responsible Western representatives of the supplier will:

1. Have the right of access to the "computer using facility" and all equipment, wherever located, during normal working hours and at any other time the equipment is operating; and

2. Be furnished information demonstrating continued authorized application of the equipment; and

3. Be notified of any significant change of application or of other facts, on which the license was based;

2. The following information must be clearly stated on an export application for equipment controlled by this Advisory Note:

- a. A full description of the equipment and its intended application and workload; and
- b. A complete identification of all end-users and their activities.

Advisory Note 7: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of all items controlled by Category 4 for national security reasons, except:

- a. Computers controlled by 4A01 or 4A02;
- b. "Digital computers" controlled by 4A03.c having a "CTP" exceeding 41 Mtops, and specially designed components therefor;
- c. Computers controlled by 4A04, and specially designed related equipment, "assemblies" and components therefor;
- d. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 7.a, .b, or .c, controlled by 4D or 4E for national security reasons.

11. In Category 4 (Computers), following Advisory Note 7, the heading

"Information on How to Calculate Composite Theoretical Performance (CTP)" and the Technical Note following the heading are revised to read as follows:

Information on How to Calculate "Composite Theoretical Performance" ("CTP"):

Technical Note: "Composite theoretical performance" (CTP).

Abbreviations Used in This Technical Note

- CE "computing element" (typically an arithmetic logical unit)
- FP floating point
- XP fixed point
- t execution time
- XOR exclusive OR
- CPU central processing unit
- TP theoretical performance (of a single CE)
- CTP "composite theoretical performance" (multiple CEs)
- R effective calculating rate
- Execution time 't' is expressed in microseconds, and "CTP" is expressed in Mtops (millions of theoretical operations per second).

"CTP" is a measure of computational performance given in millions of theoretical operations per second (Mtops). In calculating the "Composite Theoretical Performance" ("CTP") of an aggregation of "Computing Elements" ("CEs"), the following three steps are required:

1. Calculate the effective calculating rate (R) for each "computing element" ("CE");
2. Apply the word length adjustment to this rate, resulting in a Theoretical Performance (TP) for each "computing element" ("CE"). Select the maximum resulting value of TP;

"Computing elements" ("CEs") that perform different types of arithmetic operations in a single machine cycle are to be treated as multiple separate "computing elements" ("CEs") performing simultaneously (e.g., a "CE" performing an addition and a multiplication in one cycle is to be treated as two "CEs", the first performing an addition in one cycle and the second performing a multiplication in one cycle).

If a single "computing element" ("CE") has both scalar function and vector function, use the shorter execution time value.

Note Y: If no FP add or FP multiply are implemented, but the "CE" performs FP divide:

$$R_{fp} = \frac{1}{t_{fp} \text{ divide}}$$

If the divide is not implemented, the fp reciprocal should be used.

3. If there is more than one "computing element" ("CE"), combine the Theoretical Performances (TPs) resulting in a "Composite Theoretical Performance" ("CTP") for the configuration.

Note 1: For aggregations of multiple "computing elements" ("CEs") that have both shared and unshared memory subsystems, the calculation of "CTP" is completed hierarchically, in two steps: first, aggregate the groups of "computing elements" ("CEs") sharing memory, second calculate the "CTP" of the groups using the calculation method for multiple "computing elements" ("CEs") not sharing memory.

Note 2: This aggregation should not be applied to computers connected through a decontrolled "local area network".

Note 3: "Computing elements" ("CEs") that are limited to input/output and peripheral functions (e.g., disk drive, communication and video display controllers) are not aggregated into the "CTP" calculation.

The following table shows the method of calculating the Effective Calculating rate (R) for each "Computing Element" ("CE"):

For computing elements (CEs) implementing:	Effective calculating Rate, R
XP only (R _{xp})	$1 + 3 * (t_{fp} \text{ add})$ If no add is implemented use: $1 + (t_{fp} \text{ mult})$ If neither add nor multiply is implemented use the fastest available arithmetic operation as follows: $1 + 3 * t_{fp}$

$$t = \frac{\text{cycle time}}{\text{the number of arithmetic operations per machine cycle}}$$

If none of the specified instructions is implemented, the effective floating point (FP) rate is 0.

Note Z: In simple logic operations, a single instruction performs a single logic manipulation of no more than two operands of given lengths.

In complex logic operations, a single instruction performs multiple logic manipulations to produce one or more results from two or more operands.

Rates should be calculated for all supported operand lengths, using the fastest executing instruction for each operand length based on:

1. Register-to-register. Exclude extraordinarily short execution times generated for operations on a predetermined operand or operands (for example, multiplication by 0 or 1).

If no register-to-register operations are implemented, continue with (2).

2. The faster of register-to-register memory or memory-to-register operations; if these also do not exist, then continue with (3).

For computing elements (CEs) implementing:	Effective calculating Rate, R
FP only (R _{fp})	See Notes X and Z. Max $1 + T_{fp} \text{ add}$, $1 + t_{fp} \text{ mult}$
Both FP and XP (R) ..	See Notes X and Y. Calculate both R _{fp} , R _{xp} $1 + 3 * t_{log}$
For simple logic processors not implementing any of the specified arithmetic operations.	Where t _{log} is the execution time of the XOR, or for logic hardware not implementing the XOR, the fastest simple logic operation. See Notes X and Z. $R = R * WL/64$ Where R is the number of results per second, WL is the number of bits upon which the logic operation occurs, and 64 is a factor to normalize to a 64 bit operation.
For special logic processors not using any of the specified arithmetic or logic operations.	See Notes X and Z. $R = R * WL/64$ Where R is the number of results per second, WL is the number of bits upon which the logic operation occurs, and 64 is a factor to normalize to a 64 bit operation.

Note X: For "CEs" that perform multiple arithmetic operations of a specific type in a single cycle (e.g., two additions per cycle), the execution time t is given by:

3. Memory-to-memory.

In each case above, use the shortest execution time certified by the manufacturer.

TP for each supported operand length WL: Adjust the effective rate R (or R_r) by the word length adjustment L as follows:

$$TP = R * L, \text{ where } L = (1/3 + WL/96)$$

Note: The word length WL used in these calculations is the operand length in bits. (If an operation uses operands of different lengths, select the largest word length.)

The combination of a mantissa ALU and an exponent ALU of a floating point processor or unit is considered to be one "computing element" ("CE") with a Word Length (WL) equal to the number of bits in the data representation (typically 32 or 64) for purposes of the "Composite Theoretical Performance" ("CTP") calculation.

This adjustment is not applied to specialized logic processors that do not use XOR instructions. In this case TP = R.

Select the maximum resulting value of TP for:

- Each XP-only "CE" (R_{xp});
- Each FP-only "CE" (R_{fp});
- Each combined FP and XP "CE" (R);
- Each simple logic processor not implementing any of the specified arithmetic operations; and
- Each special logic processor not using any of the specified arithmetic or logic operations.

"CTP" for aggregations of "CEs", including CPUs:

For a CPU with a single "CE", "CTP" = TP (for CEs performing both fixed and floating point operations, TP = max (TP_{fp}, TP_{xp})).

For aggregations of multiple "CEs" operating simultaneously:

Note 1: For configurations that do not allow all of the "CEs" to run simultaneously, the configuration of permissible "CEs" that provides the largest "CTP" should be used. The TP of each contributing "CE" is to be calculated at its maximum value theoretically possible before the "CTP" of the combination is derived.

Note 2: A single integrated circuit chip or board assembly may contain multiple "CEs".

Note 3: Simultaneous operations are assumed to exist when the computer manufacturer claims concurrent, parallel or simultaneous operation or execution in a manual or brochure for the computer.

"CTP" = TP₁ + C₂ * TP₂ + ... + C_n * TP_n, where TP₁ is the highest of the TPs, and C_i is a coefficient determined by the strength of the interconnection between "CEs", as follows:

For multiple "CEs" sharing memory:

$$C_2 = C_3 = C_4 = \dots = C_n = 0.75.$$

Note: "CEs" share memory if they access a common segment of solid state memory. This memory may include cache storage, main storage, or other internal memory. Peripheral memory devices such as disk drives, tape drives, or RAM disks are not included.

For multiple "CEs" not sharing memory, interconnected by one or more data channels:

$$C_i = \frac{8 * S_i}{(WL_i * TP_i)}$$

(i = 2,, n) where S_i = sum of the maximum data rates (in units of MByte/sec.) for all data channels connected to the ith "CE" or group of "CEs" sharing memory.

Note: This does not include channels dedicated to transfers between one individual processor and its most immediate memory or related equipment.

WL_i is the operand length for which TP_i was obtained, and the factor 8 normalizes S_i (measured in bytes per second) and WL (given in bits).

Note: If C_i exceeds 0.75, the formula for a "CE" or group of "CEs" sharing direct addressable memory applies (i.e., C_i cannot exceed 0.75).

12. In Category 5 (Telecommunications and "Information Security"), Subcategory I

"Telecommunications", ECCN 5A01A is amended by revising the heading of the entry to read as follows:

5A01A Any type of telecommunication equipment having any of the characteristics, functions or features described in this entry.

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13. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5A02A is revised to read as follows:

5A02A "Telecommunication transmission equipment" or systems and specially designed components and accessories therefor, having any of the characteristics, functions or features described in this entry.

Requirements

Validated License Required:
QSTVWYZ

Unit: Equipment in number; parts and accessories in \$ value

Reason for Control: NS

GLV: \$5,000

GCT: Yes

GFW: Yes

List of Items Controlled

Note: "Telecommunication transmission equipment"

a. Categorized as follows, or combinations thereof:

1. Radio equipment (e.g., transmitters, receivers and transceivers);
2. Line terminating equipment;
3. Intermediate amplifier equipment;
4. Repeater equipment;
5. Regenerator equipment;
6. Translation encoders (transcoders);
7. Multiplex equipment (statistical multiplex included);
8. Modulators/demodulators (modems);
9. Transmultiplex equipment (see CCITT Rec. G.701);
10. "Stored program controlled" digital cross-connection equipment;
11. "Gateways" and bridges;
12. "Media access units"; and

b. Designed for use in single or multi-channel communication via:

1. Wire (line);
2. Coaxial cable;
3. Optical fiber cable;
4. Electromagnetic radiation.

"Telecommunication transmission equipment" or systems and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

a. Employing digital techniques, including digital processing of analog signals, and designed to operate at a "digital transfer rate" at the highest multiplex level exceeding 45 Mbit/s or a "total digital transfer rate" exceeding 90 Mbit/s;

Note: 5A02.a does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b. Being "stored program controlled" digital cross connect equipment with a "digital transfer rate" exceeding 8.5 Mbit/s per port;

c. Being equipment containing:

c.1. Modems using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 19,200 bit/s;

c.2. "Communication channel controllers" with a digital output having a "data signalling rate" exceeding 64,000 bit/s per channel; or

c.3. "Network access controllers" and their related common medium having a "digital transfer rate" exceeding 33 Mbit/s;

Note: If any uncontrolled equipment contains a "network access controller", it cannot have any type of telecommunications interface except those described in, but not controlled by, 5A02.c.

d. Employing a "laser" and having any of the following characteristics:

d.1. Having a transmission wavelength exceeding 1,000 nm;

d.2. Employing analog techniques and having a bandwidth exceeding 45 MHz;

d.3. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

d.4. Employing wavelength division multiplexing techniques; or

d.5. Performing "optical amplification";

e. Being radio equipment operating at input or output frequencies exceeding:

e.1. 31 GHz for satellite-earth station applications; or

e.2. 26.5 GHz for other applications;

Note: 5A02.e.2 does not control equipment for civil use when conforming with an ITU allocated band between 26.5 GHz and 31 GHz.

f. Being radio equipment:

f.1. Employing quadrature-amplitude-modulation (QAM) techniques above level 4 if the "total digital transfer rate" exceeds 8.5 Mbit/s;

f.2. Employing quadrature-amplitude-modulation (QAM) techniques above level 16 if the "total digital transfer rate" is equal to or less than 8.5 Mbit/s; or

f.3. Employing other digital modulation techniques and having a "spectral efficiency" greater than 3 bit/sec/Hz;

Note: 5A02.f.2 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

g. Being radio equipment operating in the 1.5 to 87.5 MHz band and having either of the following characteristics:

g.1.a. Automatically predicting and selecting frequencies and "total digital transfer rates" per channel to optimize the transmission; and

g.1.b. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the 1.5 to 30 MHz frequency range or 250 W or more in the 30 to 87.5 MHz frequency range, over an "instantaneous bandwidth" of one octave or more and with an output harmonic and distortion content of better than -80 dB; or

g.2. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal;

h. Being radio equipment employing "spread spectrum" or "frequency agility" (frequency hopping) techniques having any of the following characteristics:

h.1. User programmable spreading codes; or

h.2. A total transmitted bandwidth that is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz;

i. Being digitally controlled radio receivers having more than 1,000 channels, which:

i.1. Search or scan automatically a part of the electromagnetic spectrum;

i.2. Identify the received signals or the type of transmitter; and

i.3. Have a "frequency switching time" of less than 1 ms;

j. Providing functions of digital "signal processing" as follows:

j.1. Voice coding at rates of less than 2,400 bit/s;

j.2. Employing circuitry that incorporates "user-accessible programmability" of digital "signal processing" circuits exceeding the limits of 4A03.g;

k. Being underwater communications systems having any of the following characteristics:

k.1. An acoustic carrier frequency outside the range of 20 to 60 kHz;

k.2. Using an electromagnetic carrier frequency below 30 kHz; or

k.3. Using electronic beam steering techniques.

14. In Category 5

(Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5A03A is revised to read as follows:

5A03A "Stored program controlled" switching equipment and related signalling systems having any of the characteristics, functions or features described in this entry, and specially designed components and accessories therefor.

Requirements

Validated License Required:

QSTVWYZ

Unit: Equipment in number; parts and accessories in \$ value

Reason for Control: NS

GLV: \$5,000

GCT: Yes

GFW: Yes

List of Items Controlled

"Stored program controlled" switching equipment and related signalling systems having any of the following characteristics, functions or features; and specially designed components and accessories therefor:

Note: Statistical multiplexers with digital input and digital output that provide switching are treated as "stored program controlled" switches.

a. "Common channel signalling";

Note: Signalling systems in which the signalling channel is carried in and refers to no more than 32 multiplexed channels forming a trunk line of no more than 2.1 Mbit/s, and in which the signalling information is carried in a fixed, time division multiplexed channel without the use of labelled messages, are not considered to be "common channel signalling" systems.

b. Containing "Integrated Services Digital Network" (ISDN) functions and having either of the following:

b.1. Switch-terminal (e.g., subscriber line) interfaces with a "digital transfer rate" at the highest multiplex level exceeding 192,000 bit/s, including the associated signalling channel (e.g., 2B+D); or

b.2. The capability that a signalling message received by a switch on a given channel that is related to a communication on another channel may be passed through to another switch;

Note: 5A03.b does not preclude:

a. The evaluation and appropriate actions taken by the receiving switch.

b. Unrelated user message traffic on a D channel of ISDN.

c. Multi-level priority and pre-emption for circuit switching;

Note: 5A03.c does not control single-level call pre-emption.

d. "Dynamic adaptive routing";

e. Routing or switching of "datagram" packets;

f. Routing or switching of "fast select" packets;

Note: The restrictions of 5A03.e and 5A03.f do not apply to networks restricted to using only "network access controllers" or to "network access controllers" themselves.

g. Designed for automatic hand-off of cellular radio calls to other cellular switches or automatic connection to a centralized subscriber data base common to more than one switch;

h. Packet switches, circuit switches and routers with ports or lines exceeding either:

h.1. A "data signalling rate" of 64,000 bit/s per channel for a "communications channel controller"; or

Note: 5A03.h.1 does not preclude the multiplexing over a composite link of communications channels not controlled by 5A03.h.1.

h.2. A "digital transfer rate" of 33 Mbit/s for a "network access controller" and related common media;

i. "Optical switching";

j. Employing "Asynchronous Transfer Mode" (ATM) techniques;

k. Containing stored program controlled digital crossconnect equipment with "digital transfer rate" exceeding 8.5 Mbit/s per port.

15. In Category 5

(Telecommunications and "Information Security"), Subcategory I

"Telecommunications", ECCN 5A04A is amended by revising the heading of the entry and the Requirements section to read as follows:

5A04A Centralized network control having the characteristics described in this entry.

Requirements

Validated License Required:

QSTVWYZ

Unit: Equipment in number; parts and accessories in \$ value

Reason for Control: NS

GLV: \$5,000

GCT: Yes

GFW: Yes

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16. In Category 5

(Telecommunications and "Information Security"), Subcategory I

"Telecommunications", ECCN 5A05A is revised to read as follows:

5A05A Optical fiber communication cables, optical fibers and specially designed components and accessories therefor.

Requirements

Validated License Required:

QSTVWYZ

Unit: Meters

Reason for Control: NS

GLV: \$3,000

GCT: Yes

GFW: Yes

List of Items Controlled

Optical fiber communication cables, optical fibers and specially designed components and accessories therefor, as follows:

a. Optical fibers or cables of more than 50 m in length having either of the following characteristics:

a.1. Designed for single mode operation; or

a.2. For optical fibers, capable of withstanding a proof test tensile stress of 2×10^9 N/m² or more;

Technical Note: Proof Test: On-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K and relative humidity 40%.

N.B.: Equivalent national standards may be used for executing the proof text.

b. Components and accessories specially designed for the optical fibers or cables controlled by 5A05.a, except connectors for use with optical fibers or cables with a repeatable coupling loss of 0.5 dB or more;

c. Optical fiber cables and accessories designed for underwater use.

Note: For fiber optic hull penetrators or connectors, see 8A02.c.

17. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5A06A is revised to read as follows:

5A06A Phased array antennas, operating above 10.5 GHz, containing active elements and distributed components, and designed to permit electronic control of beam shaping and pointing, except those for landing systems with instruments meeting ICAO standards (microwave landing systems (MLS)).

Requirements

Validated License Required:
QSTVWYZ

Unit: Equipment in number; parts and accessories in \$ value

Reason for Control: NS

GLV: \$5,000

GCT: Yes

GFW: Yes

18. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5B01A is amended by revising the heading of the entry and the Requirements section to read as follows:

5B01A Equipment, and specially designed components and accessories therefor, specially designed for the "development", "production", or "use" of equipment, materials, or functions controlled by the entries in the telecommunications section of Category 5 for national security reasons.

Requirements

Validated License Required:
QSTVWYZ

Unit: Equipment in number; parts and accessories in \$ value

Reason for Control: NS

GLV: \$5,000

GCT: Yes

GFW: Yes

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19. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5B02A is revised to read as follows:

5B02A Other equipment.

Requirements

Validated License Required:
QSTVWYZ

Unit: Equipment in number; parts and accessories in \$ value

Reason for Control: NS

GLV: \$5,000

GCT: Yes

GFW: Yes

List of Items Controlled

a. Bit error rate (BER) test equipment designed or modified to test the equipment controlled by 5A02.a;

b. Data communication protocol analyzers, testers, and simulators for functions controlled by 5A02.a;

c. Stand alone "stored program controlled" radio transmission media simulators/channel estimators specially designed for testing equipment controlled by 5A02.e.

20. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5C01A is revised to read as follows:

5C01A Preforms of glass or of any other material optimized for the manufacture of optical fibers controlled by 5A05.

Requirements

Validated License Required:
QSTVWYZ

Unit: \$ value

Reason for Control: NS

GLV: \$3,000

GCT: Yes

GFW: Yes

21. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5E02A is amended revising the heading of the entry to read as follows:

5E02A Specific technologies as described in this entry.

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22. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", under the heading "Notes for Telecommunications", Advisory Notes 3, 5, 6, 8, 10, 12, 15, 16, 17, 19, 20, 21, and 22 are revised to read as follows:

Notes for Telecommunications:

* * * * *

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of the following communications, measuring or test equipment:

a. "Telecommunications transmission equipment" controlled by 5A02.a, 5A02.b, or 5A02.d provided that:

1. It is intended for general commercial traffic in a civil communication system;

2. It is designed for operation at a "digital transfer rate" at the highest multiplex level of 140 Mbit/s or less and at a "total digital transfer rate" of 168 Mbit/s or less;

N.B.: An additional 2 Mbit/s for operation, maintenance and service communications may be added to the "total digital transfer rate" of 168 Mbit/s.

3. For equipment controlled by 5A02.d, the transmission wavelength must not exceed 1,370 nm and optical fiber must be used as the communication medium;

4. It is to be installed under the supervision of the seller in a permanent circuit; and

5. It is to be operated by the civilian authorities of the importing country;

b. Measuring or test equipment controlled by 5B01.c, 5B02.a or 5B02.b that is necessary for the use (i.e., installation, operation and maintenance) of equipment exported under the conditions of this Advisory Note, provided that:

1. It is designed for use with communication transmission equipment operating at a "digital transfer rate" of 140 Mbit/s or less, and at a "total digital transfer rate" of 168 Mbit/s or less; and

2. It will be supplied in the minimum quantity required for the transmission equipment eligible for administrative exception treatment.

N.B.1: Where possible, built-in test equipment (BITE) will be provided for installation or maintenance of transmission equipment eligible for administrative exception treatment under this Advisory Note rather than individual test equipment.

N.B.2: The license application must include the locations of the connection points, types of equipment being connected and transmission rates.

N.B.3: Licenses for export of equipment covered by this Note are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note.

Advisory Note 4: * * *

Advisory Note 5: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of the following, provided that the associated multiplex equipment is designed for operation at a "digital transfer rate" at the highest multiplex level of 140 million bit/s or less:

a. Digital microwave radio relay equipment controlled by 5A02.a or 5A02.f, for fixed civil installations, operating at fixed frequencies not exceeding 23.6 GHz, with a "total digital transfer rate" not exceeding 168 Mbit/s;

b. Ground communication radio equipment for use with temporarily fixed services operated by civil authorities and designed to be used at fixed frequencies not exceeding 23.6 GHz;

c. Radio transmission media simulators/channel estimators controlled by 5B02.c, designed for testing equipment described in this Advisory Note 5.a or .b.

Advisory Note 6: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of equipment controlled by 5A03.a or "software" for "common channel signalling" controlled by 5D01 or 5D03.c, provided that:

a. The "common channel signalling" is restricted to quasi-associated or associated mode of operation according to CCITT Red Book, Volume X, fascicle X.1;

b. No functions, other than those described in the following recommendations in the Red Book of CCITT: Q.701 to Q.709, Q.721 to Q.725, Q.791 and Q.795, are included;

N.B.: Only functions described in paragraph 2 of Q.795 are to be included. These Q.795 functions may not provide centralized network control having all of the following characteristics:

a. Is based on a network management protocol; and

b. Does both of the following:

1. Receives data from the nodes; and

2. Processes these data in order to:

a. Control traffic; and

b. Directionalize paths.

c. No form of "Integrated Services Digital Network" (ISDN) is provided;

d. Equipment or "software" is restricted to that necessary for intra-city applications or, for "Private Automatic Branch Exchanges", within a radius of 100 km;

N.B. 1: Where a recognized city contains more than one subordinate entity or city, the larger unified boundary prevails. In no case is the boundary larger than that of Beijing.

N.B. 2: A suburban entity that does not belong to a city, but is located within a circle with a diameter of 50 km and with a city in the middle, can be considered as part of a city.

e. No means are provided that will allow "common channel signalling" via analog transmission links;

f. All the applicable conditions enumerated in this Advisory Note 6.a to .e are accomplished by:

1. Omission or physical removal of equipment or coding;

2. Over-writing with non-functioning statements; or

3. Reasonably non-reversible modifications.

Advisory Note 7: * * *

Advisory Note 8: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of repair facilities or "software" controlled by 5B01.c or 5D01 for the repair of "stored program controlled" communication switching equipment or systems, provided that:

a. The repair facilities:

1. Are specially designed equipment for repair;

2. Are to be used to repair controlled equipment authorized for export as an administrative exception under Advisory Note 6 (Notes for Telecommunications) or equipment that is not controlled for national security reasons;

3. Are shipped in reasonable quantities necessary for the types and quantities of exported equipment being serviced;

4. Do not provide local production facilities; and

5. Do not provide for testing of individual electronic components;

b. The repair does not upgrade the equipment or "software";

c. All the records of repair activity are kept by a representative of the Western supplier; and

d. The information to accompany each license application shall include:

1. A complete list of equipment to be provided; and

2. A clear identification of the users and their activities.

N.B.: Nothing in this Advisory Note 8 shall be construed as overriding controls in other ECCNs contained in the Commerce Control List.

Advisory Note 9: * * *

Advisory Note 10: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of minimum quantities of semiconductor "lasers" designed and intended for use with a civil optical fiber communication system that would be either not controlled for national security reasons or eligible for administrative exceptions treatment under Advisory Note 3 (Notes for Telecommunications), having an output wavelength not exceeding 1,370 nm and a CW power output not exceeding 100 mW.

Advisory Note 11: * * *

Advisory Note 12: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of cables, fibers and specially designed components and accessories therefor controlled by 5A05, provided that:

a. Quantities are normal for the envisaged end-use; and

b. They are for a specified civil end-use.

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Advisory Note 15: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Groups Q and W of technology controlled by the telecommunications entries in Category 5, and of instrumentation, test equipment, components and specially designed "software" therefor, and materials and components controlled by the telecommunications entries in Category 5 or by entries in other Categories on the Commerce Control List, for the modification or "production" of telecommunications equipment or systems eligible for administrative exceptions treatment under Advisory Note 1 in the Notes for Telecommunications (Category 5), provided that:

N.B.: Technology for general purpose computers is not eligible for treatment under this Advisory Note, i.e., it remains governed by Category 4.

a. The characteristics of the telecommunications equipment or systems are limited to those eligible for administrative exceptions treatment under

Advisory Note 1 in the Notes for Telecommunications (Category 5);

b. Modification of the telecommunications equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of Advisory Note 1 in the Notes for Telecommunications (Category 5);

c. Testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no go tests;

N.B.: Advisory Note 15.c does not preclude exports of equipment or technology that would be possible in accordance with the provisions of other Categories on the Commerce Control List.

d. The specially designed "software" is that necessary to use the transferred technology, instrumentation and test equipment;

e. All "software" shall be exported in machine executable form only;

f. "Development" technology is not included;

g. The contract includes explicit conditions to ensure that:

1. The "production" technology or "production" equipment is not exported or reexported, either directly or indirectly, to another proscribed destination;

2. The supplier or licensor may appoint a representative who is entitled to verify that the "production" technology and "production" equipment or systems serve their intended use;

3. Any modification of the capabilities or functions of the produced equipment must be approved by the supplier or licensor;

4. The supplier's or licensor's personnel have right of access to all the facilities directly involved in the "production" of the telecommunications equipment or systems;

5. The "production" technology, "production" equipment and produced equipment or systems will be for civil end-use only and not for reexport to proscribed destinations other than Country Groups Q and W;

h. System integration testing will be performed by the supplier or licensor, if it requires test tools that would provide the licensee with the capability to recover source code or upgrade the system beyond the performance thresholds or features of Advisory Note 1 in the Notes for Telecommunications (Category 5);

i. End-use reporting of the installed telecommunication equipment or systems will be provided in accordance with the provisions of Advisory Note 1 in the Notes for Telecommunications (Category 5).

N.B. 1: No export under the favorable consideration provisions of this Advisory Note shall establish a precedent for the approval of exports under entries in other Categories on the Commerce Control List.

N.B. 2: For each license application for export pursuant to this Advisory Note, the exporter must submit the following assurances to be obtained from the importer:

a. An Import Certificate issued by the importer's national authorities;

b. An assurance that the importer will make available information as requested by the Department of Commerce; and

c. An assurance that the importer will allow on-site inspection if requested by the Department of Commerce.

Advisory Note 16: Licenses will receive favorable consideration for the export to satisfactory end-users in Country Groups QWY and the People's Republic of China of radio relay communications equipment, specially designed components and accessories, specially designed test equipment, "software" and technology for the "use" of equipment or materials therefor, controlled by the telecommunications entries in this Category, provided that:

a. It is for fixed installation and civil application;

b. It is designed for operation at a total "digital transfer rate" not exceeding 156 Mbit/s;

c. The equipment does not employ either of the following:

1. Quadrature Amplitude Modulation (QAM) techniques above level 64; or

2. Other digital modulation techniques with a "spectral efficiency" exceeding 6.3 bit/s/Hz;

d. It operates at fixed frequencies not exceeding 9 GHz;

e. License applications for export under the provisions of this Advisory Note provide the following information:

1. A complete list of the equipment or system to be provided;

2. Specific end-use information including intended application; and

3. The location of the equipment.

Advisory Note 17: Licenses will receive favorable consideration for the export to satisfactory end-users in Country Groups QWY and the People's Republic of China of optical fiber cables and optical fiber transmission equipment or systems controlled by 5A02 or 5A05, provided that:

a. The equipment or systems are intended for general commercial international traffic in an international civil submarine optical fiber telecommunication system linking the importing country with a COCOM member country;

b. It is to be installed in a permanent circuit under the supervision of the COCOM member country licensee;

c. No means are to be provided for the transmission of traffic between points in one or more proscribed countries other than those in Country Group Q or W;

d. The total length of optical fiber cable to be installed within the proscribed country, excluding cable in territorial waters, does not exceed 10 km or the shortest distance that is practical for installation;

e. The "digital transfer rate" at the highest multiplex level does not exceed 565 Mbit/s;

f. The "laser" transmission wavelength does not exceed 1,550 nm;

g. The equipment is not controlled by 5A02.d.2 to d.5 or by the "information security" entries in Category 5;

h. Controlled spare parts shall remain under the supervision of the COCOM member country licensee;

i. The COCOM member country licensee or his designated representative, who shall be from a non-proscribed country, shall have the right of access to all the equipment;

j. There will be no transfer of controlled technology;

k. Supervision of systems installation and of maintenance shall be performed by the licensee or the licensee's designated representative, who shall be from a non-proscribed country, using only personnel from non-proscribed countries; and

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This does not require that only nationals from the exporting country should install the system.

l. Upon request, the licensee shall carry out an inspection to establish that:

1. The system is being used for the intended civil purpose;

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection.

Advisory Note 18: * * *

Advisory Note 19: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of fiber optic telecommunications transmission systems or equipment controlled by 5A02.a and 5A02.d.1, fiber optic cables controlled by 5A05, or coaxial cable telecommunications transmission systems controlled by 5A02.a, and the test equipment, specially designed components, accessories, "software" and technology, necessary for the "use" thereof, provided that:

a. They are intended for international telecommunications links dedicated to international civil traffic between the following locations:

1.a. From the following countries: Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, or the United Kingdom;

b. To the following cities as listed by country: Albania (Tirana), Armenia (Yerevan), Azerbaijan (Baku), Bulgaria (Sofia, Varna), Byelorussia (Minsk), Georgia (Tbilisi), Kazakhstan (Alma-Ata), Kyrgyzstan (Bishkek), Moldova (Chisinau), Romania (Bucharest, Constanza), Russia (Moscow, Novorossiisk, Rostov-on-Don, St. Petersburg, Volgograd), Tajikistan (Dushanbe), Turkmenistan (Ashgabat), Ukraine (Kiev, Odessa, Sebastopol), Uzbekistan (Tashkent) or:

2.a. From the following countries: Australia, Canada, Hong Kong, Japan, New Zealand, South Korea, or the United States;

b. To the following cities as listed by country: People's Republic of China (Shanghai, Guangzhou), Russia (Khabarovsk, Nakhodka, Vladivostok, Yuzhno-Sadhalinsk), Vietnam (Hanoi, Ho Chi Minh City);

N.B.: No traffic shall be carried between points in proscribed countries, except in the

Czech Republic, Estonia, Latvia, Lithuania, Poland, and the Slovak Republic.

b.1. No portion of the system is installed in the region:

a. East of 38° longitude East;

b. West of 130° longitude East; and

c. North of 45° latitude North;

2. Except, portions of the system may be installed in the region:

a. South of 50° latitude North;

b. West of 58° longitude East; and

c. Southwest of the great circle arc connecting 50° North/50° East and 45° North/58° East;

c. They are designed to operate at a "digital transfer rate" at the highest multiplex level of 823 Mbit/s or less;

d. The "laser" transmission wavelength does not exceed 1,590 nm;

e. The equipment, if employing synchronous transmission techniques, must conform to one of the approved SONET or SDH standards or recommendations (i.e. ANSI or CCITT);

f. Supervision of systems installation and maintenance of controlled transmission equipment must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled transmission equipment that would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries;

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This is not meant to require that only nationals from the exporting country should install the system.

g. Controlled test equipment and controlled spare parts must remain under the supervision of the COCOM member country licensee;

N.B.: The supervision of the test equipment and spare parts by the licensee may be affected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

h. The COCOM member country licensee or his designated representative who must be from a non-proscribed country must have the right of access to all the equipment;

i. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; and

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated end purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection;

j. The license application must include a system plan containing equipment quantities and approximate locations for the proposed system. After final installation, unless already provided, the applicant must provide to the licensing authorities the final location of the installed equipment to the greatest degree of precision available and a map of the final cable route.

N.B. 1: License applications for the export of fiber optic telecommunications transmission systems or equipment are subject to 30-day COCOM notification before the license is issued under the provisions of this Advisory Note 19.

N.B. 2: License applications for the export of coaxial cable telecommunications transmission systems or equipment are subject to a 45-day COCOM notification before the license is issued under the provisions of this Advisory Note 19.

N.B. 3: Destinations other than those listed in subparagraph (a) of this Advisory Note 19 may be approved after a 45-day COCOM review. Applications for other destinations must be accompanied by a detailed justification for the additional link. Approved destinations for international telecommunications links will be included in subparagraph (a) of this Advisory Note 19.

Advisory Note 20: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of fiber optic telecommunication transmission systems or equipment controlled by 5A02.a and 5A02.d.1, digital radio equipment or systems controlled by 5A02.a and 5A02.f.1, coaxial cable telecommunications transmission equipment or systems controlled by 5A02.a, or fiber optic cables controlled by 5A05 and the test equipment, specially designed components, accessories, "software" and technology, necessary for the use thereof, provided that:

a. They are intended for:

1. Intra-city or inter-city links within Albania, Armenia, Azerbaijan, Bulgaria, Byelorussia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, or Vietnam;

N.B.: Intra-city links provide service within a local service area that must not extend beyond a circle with a diameter of 50 km and with the city in the middle.

2. Inter-city links between cities in Albania, Armenia, Azerbaijan, Bulgaria, Byelorussia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan;

b. They are designed to operate at a "digital transfer rate" at the highest multiplex level of 156 Mbit/s or less;

c. The "laser" transmission wavelength does not exceed 1,590 nm;

d. The radio transmission system does not employ Quadrature Amplitude Modulation (QAM) techniques above level 16;

e. The equipment or systems are designed and intended to be used for fixed civil applications directly connected to the civilian network;

f. The equipment, if employing synchronous transmission techniques, must conform to one of the approved "SONET" or "SDH" standards or recommendations (i.e., ANSI or CCITT);

g. Supervision of systems installation and of maintenance of controlled transmission equipment must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled

transmission equipment that would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries;

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This is not meant to require that only nationals from the exporting country should install the system.

h. Controlled test equipment and controlled spare parts must remain under the supervision of the COCOM member country licensee;

N.B.: The supervision of the test equipment and spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

i. The COCOM member country licensee or his designated representative, who must be from a non-proscribed country, must have the right of access to all the equipment;

j. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; and

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated end purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection;

k. The license application must include a system plan containing equipment quantities and approximate locations for the proposed system. After final installation, unless already provided, the applicant must provide to its licensing authorities the final location of the installed equipment to the greatest degree of precision available and a map of the final cable route.

N.B. 1: License applications for the export of fiber optic or radio telecommunications transmission systems or equipment for intra-city systems are subject to a 45 day COCOM notification before the license is issued under the provisions of this Advisory Note.

N.B. 2: License applications for the export of coaxial cable telecommunications transmission systems or equipment for intra-city systems are subject to a 45 day COCOM notification before the license is issued under the provisions of this Advisory Note.

N.B. 3: License applications for the export of telecommunications transmission systems or equipment for inter-city links are subject to a 45 day COCOM notification before the license is issued under the provisions of this Advisory Note. Consideration will be given to:

a. The use of specific carrier media in specific locations;

b. The concentration of strategic facilities, including military sites, along the proposed route(s);

c. Evidence which would indicate that the end-use(s) are directly related to significant strategic activities, including intelligence or diversion; and

d. The political/strategic situation in the importing country at a given time.

Advisory Note 21: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of systems or equipment controlled by 5A03.a or 5A03.b, or "software" for "common channel signalling" controlled by 5D01 or 5D03.c, and test equipment, specially designed components, accessories and technology, necessary for the "use" thereof, provided that:

a. They are intended for fiber optic, radio, or coaxial cable international telecommunication links fulfilling the provisions of Advisory Note 19.a and b.;

b. The "common channel signalling" (CCS) is restricted to associated mode of operation. Signalling channels and all related traffic channels must be carried on the same transmission system. Only international traffic between the locations listed in Advisory Note 19.a is permitted (i.e. calls originating in a proscribed country will not be rerouted to any proscribed destination);

c. No general service of "Integrated Service Digital Network" (ISDN) is provided by the proscribed country gateway switch, *except*:

1. The ISDN user part (ISUP) may be used on the international signalling link;

2. ISDN service may be provided for specified subscribers on the proscribed countries gateway switch;

d. Supervision of systems installation and of maintenance of controlled equipment and "software" must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled equipment and "software" that would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries;

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This is not meant to require that only nationals from the exporting country should install the system.

e. Controlled test equipment and controlled spare parts must remain under the supervision of the COCOM member country licensee;

N.B.: The supervision of the test equipment and spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

f. All "common channel signalling" equipment, including spares, is operational in such a form that any removal from or manipulation on the end in a proscribed country is immediately recognized (e.g. through remote maintenance and monitoring procedures) by the operator (i.e., an operator from one of the countries listed in Advisory Note 19.a.1.a or a.2.a);

g. The licensee or operator (i.e., an operator from one of the countries listed in Advisory Note 19.a.1.a or a.2.a) takes immediate action to ensure that non-operational equipment is repaired or replaced within a week of the failure;

h. The COCOM member country licensee or the designated representative of the

licensee, who must be from a non-proscribed country, must have the right of access to all the equipment;

i. Proscribed country nationals are not given tools or training allowing them to modify the approved configuration or divert equipment or "software" to non-approved uses;

j. Upon request of the government of the exporting country, the licensee or operator (i.e., an operator from one of the countries listed in Advisory Note 19.a.1.a or a.2.a) must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; and

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated end purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection;

k. The operator (i.e., an operator from one of the countries listed in Advisory Note 19.a.1.a or a.2.a) informs the exporting government immediately of any sign of misuse or diversion of "common channel signalling" hardware or "software" on the other end of the international link, or of any failure of the operator at the other end (i.e., the operator from one of the countries listed in Advisory Note 19.a.1.b or a.2.b) to allow the operator to comply with the terms of the export license;

l. Contractual agreements between the licensee and the operators on both ends of the link require that the operator at the other end of the international link (i.e., the operator from one of the countries listed in Advisory Note 19.a.1.b or a.2.b) complies fully with all the conditions stipulated in the export license and that, in the event of failure by the latter to comply, the operator who is from one of the countries listed in Advisory Note 19.a.1.a or a.2.a will inform the authorities of such country and the government of the exporting country.

N.B. 1: License applications for the export of systems, equipment, or "software" for "common channel signalling" intended for new fiber optic international telecommunication links are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note.

N.B. 2: License applications for ISDN services for specified subscribers, or systems, equipment or "software" for "common channel signalling" intended for new non-fiber optic international telecommunications links or existing links are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note. License applications for these items must contain a full description of the "common channel signalling" configuration, equipment, and "software".

Advisory Note 22: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of equipment controlled by 5A03.d, 5A03.e, or 5A03.f, "software" controlled by 5D03.c that provides features described in 5A03.d, 5A03.e, or 5A03.f, specially designed components and accessories therefor, and test equipment, "software" and technology

necessary for the "use" thereof, provided that:

a. The equipment or "software" will be used for a specified civil end-use by a civil end-user only;

b. The equipment or "software" does not perform circuit switching or circuit switching functions;

c. Supervision of systems installation and of maintenance of controlled equipment or "software" must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled equipment or "software" that would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries.

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This is not meant to require that only nationals from the exporting country should install the system.

N.B. 3: This does not apply if the equipment or "software" is designed for installation by the user without further substantial support by the supplier.

d. The COCOM member country licensee or the designated representative of the licensee, who must be from a non-proscribed country, must have the right of access to all the equipment and may carry out inspections;

e. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

e.1. The system is being used for the intended civil purpose; and

e.2. All the equipment exported under the provisions of this Advisory Note is being used for the stated end purpose and is still located at the installation site. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection.

N.B.: Licenses for exports of items covered by this Advisory Note are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note. The notification will include the equipment or "software" locations and the network topology.

23. In Category 5, Subcategory I "Information Security", ECCN 5A11A is amended by revising the heading of the entry and by revising the List of Items Controlled to read as follows:

5A11A Systems, equipment, application specific "assemblies", modules or integrated circuits for "information security", as described in this entry, and other specially designed components therefor.

* * * * *

List of Items Controlled

Systems, equipment, application specific "assemblies", modules or integrated circuits for "information security", as follows, and other specially designed components therefor:

a. Designed or modified to use "cryptography" employing digital techniques to ensure "information security";

b. Designed or modified to perform cryptanalytic functions;

c. Designed or modified to use "cryptography" employing analog techniques to ensure "information security", except:

c.1. Equipment using "fixed" band scrambling not exceeding 8 bands and in which the transpositions change not more frequently than once every second;

c.2. Equipment using "fixed" band scrambling exceeding 8 bands and in which the transpositions change not more frequently than once every ten seconds;

c.3. Equipment using "fixed" frequency inversion and in which the transpositions change not more frequently than once every second;

c.4. Facsimile equipment;

c.5. Restricted audience broadcast equipment;

c.6. Civil television equipment;

d. Designed or modified to suppress the compromising emanations of information-bearing signals;

Note: 5A11.d does not control equipment specially designed to suppress emanations for health or safety reasons.

e. Designed or modified to use cryptographic techniques to generate the spreading code for "spread spectrum" or hopping code for "frequency agility" systems;

f. Designed or modified to provide certified or certifiable "multilevel security" or user isolation at a level exceeding Class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) or equivalent;

g. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion.

24. In Category 6 (Sensors), ECCNs 6A01A and 6A02A are revised to read as follows:

6A01A Acoustics.

Requirements

Validated License Required:

QSTVWYZ.

Unit: \$ value.

Reason for Control: NS.

GLV: \$3,000.

GCT: Yes.

GFW: Yes, for 6A01.a.1.b.4 only (see Advisory Note 1.2 to Category 6).

List of Items Controlled

a. Marine acoustic systems, equipment and specially designed components therefor, as follows:

a.1. Active (transmitting or transmitting-and-receiving) systems,

equipment or specially designed components therefor, as follows:

Note: 6A01.a.1 does not control:

a. Depth sounders operating vertically below the apparatus, not including a scanning function exceeding $\pm 10^\circ$, and limited to measuring the depth of water, the distance of submerged or buried objects or fish finding;

b. Acoustic beacons, as follows:

1. Acoustic emergency beacons; or
2. Pingers specially designed for relocating or returning to an underwater position.

a.1.a. Wide-swath bathymetric survey systems for sea bed topographic mapping:

a.1.a.1. Designed:

a.1.a.1.a. To take measurements at an angle exceeding 10° from the vertical; and

a.1.a.1.b. To measure depths exceeding 600 m below the water surface; and

a.1.a.2. Designed:

a.1.a.2.a. To incorporate multiple beams any of which is less than 2° ; or
a.1.a.2.b. To provide data accuracies of better than 0.5% of water depth across the swath averaged over the individual measurements within the swath;

a.1.b. Object detection or location systems having any of the following characteristics:

a.1.b.1. A transmitting frequency below 10 kHz;

a.1.b.2. Sound pressure level exceeding 224 dB (reference 1 micropascal at 1 m) for equipment with an operating frequency in the band from 10 kHz to 24 kHz inclusive;

a.1.b.3. Sound pressure level exceeding 235 dB (reference 1 micropascal at 1 m) for equipment with an operating frequency in the band between 24 kHz and 30 kHz;

a.1.b.4. Forming beams of less than 1° on any axis and having an operating frequency of less than 100 kHz;

a.1.b.5. Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers:

a.1.b.5.a. Dynamically compensated for pressure; or

a.1.b.5.b. Incorporating other than lead zirconate titanate as the transduction element; or

a.1.b.6. Designed to operate with an unambiguous display range exceeding 5,120 m;

a.1.c. Acoustic projectors, including transducers, incorporating piezoelectric, magnetostrictive, electrostrictive, electrodynamic or hydraulic elements operating individually or in a designed combination, having any of the following characteristics:

Note 1: The control status of acoustic projectors, including transducers, specially

designed for other equipment is determined by the control status of the other equipment.

Note 2: 6A01.a.1.c does not control electronic sources that direct the sound vertically only, or mechanical (e.g., air gun or vapor-shock gun) or chemical (e.g., explosive) sources.

a.1.c.1. An instantaneous radiated acoustic power density exceeding 0.01 mW/mm²/Hz for devices operating at frequencies below 10 kHz;

a.1.c.2. A continuously radiated acoustic power density exceeding 0.001 mW/mm²/Hz for devices operating at frequencies below 10 kHz;

Technical Note: Acoustic power density is obtained by dividing the output acoustic power by the product of the area of the radiating surface and the frequency of operation.

a.1.c.3. Designed to withstand pressure during normal operation at depths exceeding 1,000 m; or

a.1.c.4. Side-lobe suppression exceeding 22 dB;

a.1.d. Acoustic systems, equipment and specially designed components for determining the position of surface vessels or underwater vehicles designed:

a.1.d.1. To operate at a range exceeding 1,000 m with a positioning accuracy of less than 10 m rms (root mean square) when measured at a range of 1,000 m; or

a.1.d.2. To withstand pressure at depths exceeding 1,000 m;

Note: 6A01.a.1.d includes equipment using coherent "signal processing" between two or more beacons and the hydrophone unit carried by the surface vessel or underwater vehicle, or capable of automatically correcting speed-of-sound propagation errors for calculation of a point.

a.2. Passive (receiving, whether or not related in normal application to separate active equipment) systems, equipment and specially designed components therefor, as follows:

a.2.a. Hydrophones (transducers) with any of the following characteristics:

a.2.a.1. Incorporating continuous flexible sensors or assemblies of discrete sensor elements with either a diameter or length less than 20 mm and with a separation between elements of less than 20 mm;

a.2.a.2. Having any of the following sensing elements:

a.2.a.2.a. Optical fibers;

a.2.a.2.b. Piezoelectric polymers; or

a.2.a.2.c. Flexible piezoelectric ceramic materials;

a.2.a.3. A hydrophone sensitivity better than -180 dB at any depth with no acceleration compensation;

a.2.a.4. When designed to operate at depths not exceeding 35 m, a hydrophone sensitivity better than

-186 dB with acceleration compensation;

a.2.a.5. When designed for normal operation at depths exceeding 35 m, a hydrophone sensitivity better than -192 dB with acceleration compensation;

a.2.a.6. When designed for normal operation at depths exceeding 100 m, a hydrophone sensitivity better than -204 dB; or

a.2.a.7. Designed for operation at depths exceeding 1,000 m;

Technical Note: Hydrophone sensitivity is defined as twenty times the logarithm to the base 10 of the ratio of rms output voltage to a 1 V rms reference, when the hydrophone sensor, without a pre-amplifier, is placed in a plane wave acoustic field with an rms pressure of 1 micropascal. For example, a hydrophone of -160 dB (reference 1 V per micropascal) would yield an output voltage of 10^{-8} V in such a field, while one of -180 dB sensitivity would yield only 10^{-9} V output. Thus, -160 dB is better than -180 dB.

a.2.b. Towed acoustic hydrophone arrays with any of the following:

a.2.b.1. Hydrophone group spacing of less than 12.5 m;

a.2.b.2. Hydrophone group spacing of 12.5 m to less than 25 m and designed or able to be modified to operate at depths exceeding 35 m;

Technical Note: Able to be modified in 6A01.a.2.b.2 means having provisions to allow a change of the wiring or interconnections to alter hydrophone group spacing or operating depth limits. These provisions are: spare wiring exceeding 10% of the number of wires, hydrophone group spacing adjustment blocks or internal depth limiting devices that are adjustable or that control more than one hydrophone group.

a.2.b.3. Hydrophone group spacing of 25 m or more and designed to operate at depths exceeding 100 m;

a.2.b.4. Heading sensors controlled by 6A01a.2.d;

a.2.b.5. Non-metallic strength members or longitudinally reinforced array hoses;

a.2.b.6. An assembled array of less than 40 mm in diameter;

a.2.b.7. Multiplexed hydrophone group signals; or

a.2.b.8. Hydrophone characteristics specified in 6A01.a.2.a;

a.2.c. Processing equipment specially designed for towed acoustic hydrophone arrays with either of the following:

a.2.c.1. A Fast Fourier or other transform of 1,024 or more complex points in less than 20 ms with no "user-accessible programmability"; or

a.2.c.2. Time or frequency domain processing and correlation, including spectral analysis, digital filtering and

beamforming using Fast Fourier or other transforms or processes with "user accessible programmability";

a.2.d. Heading sensors having an accuracy of better than $\pm 0.5^\circ$; and
a.2.d.1. Designed to be incorporated within the array housing and to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m; or

a.2.d.2. Designed to be mounted external to the array housing and having a sensor unit capable of operating with 360° roll at depths exceeding 35 m;

b. Terrestrial geophones capable of conversion for use in marine systems, equipment or specially designed components controlled by 6A01.a.2.a;

c. Correlation-velocity sonar log equipment designed to measure the horizontal speed of the equipment carrier relative to the sea bed at distances between the carrier and the sea bed exceeding 500 m.

6A02A Optical Sensors.

Requirements

Validated License Required:

QSTVWYZ.

Unit: Number; \$ value for parts and accessories.

Reason for Control: NS, FP, MT (see Notes).

GLV: \$3,000, except \$0 for 6A01.a.1, a.2, a.3, and c.

GCT: Yes, except MT and FP (see Notes).

GFW: Yes (Advisory Note 2.3 to Category 6 only).

Notes

1. FP controls for regional stability apply to items controlled by 6A02.a.1, a.2, a.3, and c (see § 776.16(b) of this subchapter).

2. FP controls for human rights apply to all destinations except Australia, Japan, New Zealand, and members of NATO for police-model infrared viewers controlled by 6A02.c (see § 776.14 of this subchapter).

3. MT controls apply to optical detectors described in 6A02.a.1, a.3, and a.4 that are specially designed or rated as electromagnetic (including "laser") and ionized-particle radiation resistant.

List of Items Controlled

a. Optical detectors, as follows:

Note: 6A02.a does not control germanium or silicon photodevices.

a.1. "Space-qualified" solid-state detectors having any of the following:

a.1.a.1. A peak response in the wavelength range exceeding 10 nm, but not exceeding 300 nm; and

a.1.a.2. A response of less than 0.1% relative to the peak response at a wavelength exceeding 400 nm;

a.1.b.1. A peak response in the wavelength range exceeding 900 nm, but not exceeding 1,200 nm; and

a.1.b.2. A response "time constant" of 95 ns or less; or

a.1.c. A peak response in the wavelength range exceeding 1,200 nm, but not exceeding 30,000 nm;

a.2. Image intensifier tubes and specially designed components therefor, as follows:

a.2.a. Image intensifier tubes having all of the following:

a.2.a.1. A peak response in wavelength range exceeding 400 nm, but not exceeding 1,050 nm;

a.2.a.2. A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of less than 25 micrometers; and

a.2.a.3.a. An S-20, S-25 or multi-alkali photocathode; or

a.2.a.3.b. A GaAs or GaInAs photocathode; a.2.b. Specially designed components as follows:

a.2.b.1. Fiber optic image inverters;

a.2.b.2. Microchannel plates having both of the following characteristics:

a.2.b.2.a. 15,000 or more hollow tubes per plate; and

a.2.b.2.b. Hole pitch (center-to-center spacing) of less than 25 micrometers; or

a.2.b.3. GaAs or GaInAs

photocathodes;

a.3. Non-"space-qualified" "focal plane arrays", having any of the following:

Technical Note: Linear or two-dimensional multi-element detector arrays are referred to as "focal plane arrays".

a.3.a.1. Individual elements with a peak response within the wavelength range exceeding 900 nm, but not exceeding 1,050 nm; and

a.3.a.2. A response "time constant" of less than 0.5 ns;

a.3.b.1. Individual elements with a peak response in the wavelength range exceeding 1,050 nm, but not exceeding 1,200 nm; and

a.3.b.2. A response "time constant" of 95 ns or less; or

a.3.c. Individual elements with a peak response in the wavelength range exceeding 1,200 nm, but not exceeding 30,000 nm;

Note 1: 6A02.a.3 includes photoconductive arrays and photovoltaic arrays.

Note 2: 6A02.a.3 does not control silicon "focal plane arrays", multi-element (not to exceed 16 elements) encapsulated photoconductive cells or pyroelectric detectors using any of the following:

a. Lead sulphide;

b. Triglycine sulphate and variants;

c. Lead-lanthanum-zirconium titanate and variants;

d. Lithium tantalate;

e. Polyvinylidene fluoride and variants;

f. Strontium barium niobate and variants;

or
g. Lead selenide.

a.4. Non-"space-qualified" single-element or non-focal-plane multi-element semiconductor photodiodes or phototransistors having both of the following:

a.4.a. A peak response in the wavelength range exceeding 1,200 nm, but not exceeding 30,000 nm; and

a.4.b. A response "time constant" of 0.5 ns or less;

b. "Multispectral imaging sensors" designed for remote sensing applications, having either of the following characteristics:

b.1. An Instantaneous-Field-Of-View (IFOV) of less than 200 microradians; or

b.2. Specified for operation in the wavelength range exceeding 400 nm, but not exceeding 30,000 nm; and

b.2.a. Providing output imaging data in digital format; and

b.2.b.1. "Space-qualified"; or

b.2.b.2. Designed for airborne operation, using other than silicon detectors, and having an IFOV of less than 2.5 milliradians;

c. Direct view imaging equipment operating in the visible or infrared spectrum, incorporating either of the following:

c.1. Image intensifier tubes controlled by 6A02.a.2.a; or

c.2. Focal plane arrays controlled by 6A02.a.3;

Technical Note: "Direct view" refers to imaging equipment operating in the visible or infrared spectrum, that presents a visual image to a human observer without converting the image into an electronic signal for television display, and that cannot record or store the image photographically, electronically, or by any other means.

Note: 6A02.c does not control the following equipment incorporating other than GaAs or GaInAs photocathodes:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Medical equipment;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Flame detectors for industrial furnaces;

e. Equipment specially designed for laboratory use.

d. Special support components for optical sensors, as follows:

d.1. "Space-qualified" cryocoolers;

d.2. Non-"space-qualified" cryocoolers, with a cooling source temperature below 218 K (-55°C), as follows:

d.2.a. Closed cycle type with a specified Mean-Time-To-Failure (MTTF), or Mean-Time-Between-Failures (MTBF), exceeding 2,500 hours;

d.2.b. Joule-Thomson (JT) self-regulating minicoolers with bore

(outside) diameters of less than 8 mm;

d.3. Optical sensing fibers:

d.3.a. Specially fabricated either compositionally or structurally, or modified by coating, to be acoustically, thermally, inertially, electromagnetically or nuclear radiation sensitive; or

d.3.b. Modified structurally to have a "beat length" of less than 50 mm (high birefringence).

Related ECCNs: * * *

25. In Category 6 (Sensors), ECCN 6A04A is revised and the Requirements section of ECCN 6A05A is revised to read as follows:

6A04A Optics.

Requirements

Validated License Required:
QSTVWYZ.

Unit: Equipment in "number"; cable in "feet"; components in "\$ value".

Reason for Control: NS.
GLV: \$3,000.

GCT: Yes.

GFW: See Note for limits on eligibility.

Note: GFW eligibility is limited to countries listed in Supplement Nos. 2 and 3 to Part 773 and to the following items (see Advisory Note 4.2):

a. Optical mirrors controlled by 6A04.a.1, a.2., or a.4;

b. Optical components controlled by 6A04.b;

c. Optical filters controlled by 6A04.d.1.a; and

d. Optical control equipment controlled by 6A04.e.2 or e.4.

List of Items Controlled

a. Optical mirrors (reflectors), as follows:

a.1. "Deformable mirrors" with either continuous or multi-element surfaces, and specially designed components therefor, capable of dynamically repositioning portions of the surface of the mirror at rates exceeding 100 Hz;

a.2. Lightweight monolithic mirrors with an average "equivalent density" of less than 30 kg/m², and a total weight exceeding 10 kg;

a.3. Lightweight "composite" or foam mirror structures with an average "equivalent density" of less than 30 kg/m², and a total weight exceeding 2 kg;

a.4. Beam steering mirrors more than 100 mm in diameter or length of major axis that maintain a flatness of $\lambda/2$ or better (λ is equal to 633 nm) with a control bandwidth exceeding 100 Hz;

b. Optical components made from zinc selenide (ZnSe) or zinc sulphide (ZnS) with transmission in the wavelength range exceeding 3,000 nm but not exceeding 25,000 nm and either of the following:

b.1. Exceeding 100 cm³ in volume; or

b.2. Exceeding 80 mm in diameter or length of major axis and 20 mm in thickness (depth);

c. "Space-qualified" components for optical systems, as follows:

c.1. Lightweighted to less than 20% "equivalent density" compared with a solid blank of the same aperture and thickness;

c.2. Substrates, substrates with surface coatings (single-layer or multi-layer, metallic or dielectric, conducting, semiconducting or insulating) or with protective films;

c.3. Elements or assemblies of mirrors designed to be assembled in space into an optical system with a collecting aperture equivalent to or larger than a single optic 1 meter in diameter;

c.4. Manufactured from "composite" materials having a coefficient of linear thermal expansion equal to or less than 5×10^{-6} in any coordinate direction;

d. Optical filters, as follows:

d.1. For wavelengths longer than 250 nm, comprised of multi-layer optical coatings and having either of the following:

d.1.a. Bandwidths equal to or less than 1 nm Full Width Half Intensity (FWHI) and peak transmission of 90% or more; or

d.1.b. Bandwidths equal to or less than 0.1 nm FWHI and peak transmission of 50% or more;

Note: 6A04.d.1 does not control optical filters with fixed air gaps or Lyot-type filters.

d.2. For wavelengths longer than 250 nm, and having all of the following:

d.2.a. Tunable over a spectral range of 500 nm or more;

d.2.b. Instantaneous optical bandpass of 1.25 nm or less;

d.2.c. Wavelength resettable within 0.1 ms to an accuracy of 1 nm or better within the tunable spectral range; and

d.2.d. A single peak transmission of 91% or more;

d.3. Optical opacity switches (filters) with a field of view of 30° or wider and a response time equal to or less than 1 ns;

e. Optical control equipment, as follows:

e.1. Specially designed to maintain the surface figure or orientation of the "space-qualified" components controlled by 6A04.c.1 or c.3;

e.2. Having steering, tracking, stabilization or resonator alignment bandwidths equal to or more than 100 Hz and an accuracy of 10 microradians or less;

e.3. Gimbals having a maximum slew exceeding 5°, a bandwidth equal to or more than 100 Hz, and either of the following:

e.3.a.1. Exceeding 0.15 m, but not exceeding 1 m, in diameter or major axis length;

e.3.a.2. Capable of angular accelerations exceeding 2 radians/s²; and

e.3.a.3. Having angular pointing errors equal to or less than 200 microradians; or

e.3.b.1. Exceeding 1 m in diameter or major axis length;

e.3.b.2. Capable of angular accelerations exceeding 0.5 radians/s²; and

e.3.b.3. Having angular pointing errors equal to or less than 200 microradians;

e.4. Specially designed to maintain the alignment of phased array or phased segment mirror systems consisting of mirrors with a segment diameter or major axis length of 1 m or more;

f. "Fluoride fiber" cable, or optical fibers therefor, having an attenuation of less than 4 dB/km in the wavelength range exceeding 1,000 nm, but not exceeding 3,000 nm.

6A05A "Lasers", components and optical equipment, as follows.

Requirements

Validated License Required:
QSTVWYZ.

Unit: Number; \$ value for parts and accessories.

Reason for Control: NS, NP (see Note).
GLV: \$3,000.

GCT: Yes.

GFW: Yes (Advisory Notes 5.3 and 5.4 to Category 6 only).

Note: NP controls apply to all destinations, except countries listed in Supplement No. 2 to Part 773 of this subchapter, for lasers described in 6A05.a.1.c, a.2, a.4.c, a.6, a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, and d.2.

* * * * *

26. In Category 6 (Sensors), ECCN 6A07A is amended by revising the heading of the entry and by revising the List of Items Controlled and ECCN 6A08A is revised to read as follows:

6A07A Gravity meters (gravimeters) and gravity gradiometers, as described in this entry.

* * * * *

List of Items Controlled

a. Gravity meters for ground use having a static accuracy of less (better) than 10 microgal;

Note: 6A07.a does not control ground gravity meters of the quartz element (Worden) type.

b. Gravity meters for mobile platforms for ground, marine, submersible, space or airborne use having:

b.1. A static accuracy of less (better) than 0.7 milligal; and

b.2. An in-service (operational) accuracy of less (better) than 0.7 milligal

with a time-to-steady-state registration of less than 2 minutes under any combination of attendant corrective compensations and motional influences;
 c. Gravity gradiometers.

6A08A Radar systems, equipment and assemblies, and specially designed components therefor.

Requirements

Validated License Required:

QSTVWYZ.

Unit: \$ value.

Reason for Control: NS, MT, and FP (see Notes).

GLV: \$5,000.

GCT: Yes, except MT (see Notes).

GFW: No.

Notes: 1. MT controls apply to items that are designed for airborne applications and that are usable in the systems described in § 778.7(a) of this subchapter.

2. FP controls apply to Iran, and Syria for items described in 6A08.g.

List of Items Controlled

Note: 6A08 does not control:

- a. Secondary surveillance radar (SSR);
- b. Car radar designed for collision prevention;
- c. Displays or monitors used for Air Traffic Control (ATC) having no more than 12 resolvable elements per mm;
- d. Meteorological (weather) radar.

Radar systems, equipment and assemblies having any of the following characteristics, and specially designed components therefor:

- a. Operating at frequencies from 40 GHz to 230 GHz and having an average output power exceeding 100 mW;
- b. Having a tunable bandwidth exceeding $\pm 6.25\%$ of the center operating frequency;

Technical Note: The center operating frequency equals one half of the sum of the highest plus the lowest specified operating frequencies.

- c. Capable of operating simultaneously on more than two carrier frequencies;
- d. Capable of operating in synthetic aperture (SAR), inverse synthetic aperture (ISAR) or sidelooking airborne (SLAR) radar mode;
- e. Incorporating "electronically steerable phased array antennae";
- f. Capable of heightfinding non-cooperative targets;

Note: 6A08.f does not control precision approach radar equipment (PAR) conforming to ICAO standards.

- g. Designed specially for airborne (balloon or airframe mounted) operation and having Doppler signal processing for the detection of moving targets;
- h. Employing processing of radar signals using:

- h.1. "Radar spread spectrum" techniques; or

h.2. "Radar frequency agility" techniques;

- i. Providing ground-based operation with a maximum "instrumented range" exceeding 185 km;

Note: 6A08.i does not control:

- a. Fishing ground surveillance radar;
- b. Ground radar equipment specially designed for enroute air traffic control and "software" specially designed for the "use" thereof, provided:

- 1. It has a maximum "instrumented range" of 500 km or less;

- 2. It is configured so that radar target data can be transmitted only one way from the radar site to one or more civil ATC centers;

- 3. It contains no provisions for remote control of the radar scan rate from the enroute ATC center; and

- 4. It is to be permanently installed.

N.B.: The "use" "software" must be limited to "object code" and the minimum amount of "source code" necessary for installation, operation or maintenance.

j. "Laser" radar or Light Detection and Ranging (LIDAR) equipment, as follows:

- j.1. "Space-qualified"; or
- j.2. Employing coherent heterodyne or homodyne detection techniques and having an angular resolution of less (better) than 20 microradians;

Note: 6A08.j does not control LIDAR equipment specially designed for surveying or for meteorological observation.

k. Having signal processing sub-systems using "pulse compression" with:

- k.1. A "pulse compression" ratio exceeding 150; or
- k.2. A pulse width of less than 200 ns; or

l. Having data processing sub-systems with:

- l.1. "Automatic target tracking" providing, at any antenna rotation, the predicted target position beyond the time of the next antenna beam passage;

Note: 6A08.l.1 does not control conflict alert capability in air traffic control systems, or marine or harbor radar.

- l.2. Calculation of target velocity from primary radar having non-periodic (variable) scanning rates;

- l.3. Processing for automatic pattern recognition (feature extraction) and comparison with target characteristic data bases (waveforms or imagery) to identify or classify targets; or

- l.4. Superposition and correlation, or fusion, of target data from two or more "geographically dispersed" and "interconnected radar" sensors to enhance and discriminate targets.

Note: 6A08.l.4 does not control systems, equipment and assemblies used for marine traffic control.

27. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 6

(Sensors), ECCN 6B04A is revised to read as follows:

6B04A Optics.

Requirements

Validated License Required:

QSTVWYZ.

Unit: Number.

Reason for Control: NS.

GLV: \$5,000.

GCT: Yes.

GFW: Yes (Advisory Note 4.3 to Category 6 only).

List of Items Controlled

a. Equipment for measuring absolute reflectance to an accuracy of $\pm 0.1\%$ of the reflectance value;

b. Equipment other than optical surface scattering measurement equipment, having an unobscured aperture of more than 10 cm, specially designed for the non-contact optical measurement of a non-planar optical surface figure (profile) to an "accuracy" of 2 nm or less (better) against the required profile.

Note: 6B04A does not control microscopes.

28. In Category 6 (Sensors), ECCN 6C02A is amended by revising the List of Items Controlled and ECCN 6C04A is amended by revising the Requirements section to read as follows:

6C02A Optical Sensors.

* * * * *

List of Items Controlled

- a. Elemental tellurium (Te) of purity levels equal to or more than 99.9995%;
- b. Single crystals of cadmium telluride (CdTe), cadmium zinc telluride (CdZnTe) or mercury cadmium telluride (HgCdTe) of any purity level, including epitaxial wafers thereof;

Technical Note: Purity verified in accordance with ASTM F574-83 standard or equivalents.

c. "Optical fiber preforms" specially designed for the manufacture of high birefringence fibers controlled by 6A02.d.3.

6C04A Optics.

Requirements

Validated License Required:

QSTVWYZ.

Unit: \$ value.

Reason for Control: NS.

GLV: \$1,500.

GCT: Yes.

GFW: Yes (Advisory Note 4.2 to Category 6 only).

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29. In Category 6 (Sensors), ECCN 6E03A is amended by revising the List of Items Controlled to read as follows:

6E03A Other technology.

* * * * *

List of Items Controlled**a. Optics.**

a.1. Optical surface coating and treatment technology required to achieve uniformity of 99.5% or better for optical coatings 500 mm or more in diameter or major axis length and with a total loss (absorption and scatter) of less than 5×10^{-3} ;

a.2. Optical fabrication technologies, as follows:

a.2.a. For serially producing optical components at a rate exceeding 10 m² of surface area per year on any single spindle and with:

a.2.a.1. An area exceeding 1 m²; and

a.2.a.2. A surface figure exceeding $\lambda/10$ rms at the designed wavelength;

a.2.b. Single point diamond turning techniques producing surface finish accuracies of better than 10 nm rms on non-planar surfaces exceeding 0.5 m²;

Note: See also ECCN 2E03.d in Category 2, Materials Processing.

b. Lasers.

b.1. Technology for optical filters with a bandwidth equal to or less than 10 nm, a field of view (FOV) exceeding 40° and a resolution exceeding 0.75 line pairs per milliradian;

b.2. "Technology" "required" for the "development", "production" or "use" of specially designed diagnostic instruments or targets in test facilities for SHPL testing or testing or evaluation of materials irradiated by SHPL beams;

c. **Magnetometers.** Technology "required" for the "development" or "production" of fluxgate "magnetometers" or fluxgate "magnetometer" systems having a noise level:

c.1. Less than 0.05 nT rms per root Hz at frequencies of less than 1 Hz; or

c.2. 1×10^{-3} nT rms per square root Hz at frequencies of 1 Hz or more.

30. In Category 6 (Sensors), the notes under the heading "Notes for Category 6" that follow ECCN 6E96G are revised to read as follows:

Notes for Category 6**Acoustics**

Advisory Note 1.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of equipment controlled by 6A01.b or 6A01.c, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Advisory Note 1.2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of equipment controlled by

6A01.a.1.b.4 for use in civil research or civil exploration work.

Advisory Note 1.3: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of equipment controlled by 6A01.b or 6A01.c and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Optical Sensors

Advisory Note 2.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled by 6A02 or 6C02, and "software" specially designed and technology "required" therefor controlled by 6D or 6E, except:

a. Optical sensors and associated equipment controlled by 6A02.a.1, 6A02.a.2., or 6A02.a.3 and "software" specially designed and technology "required" therefor controlled by 6D or 6E;

b. Equipment controlled by 6A02.c, and "software" specially designed and technology "required" therefor controlled by 6D or 6E, other than non-ruggedized equipment operating in the visible spectrum, containing image intensifier tubes controlled by 6A02.a.2.a.3.a, for civil certified end-uses by civil end-users.

Advisory Note 2.2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of image intensifier tubes incorporating microchannel-plates, not specially designed for cameras controlled by 6A03.

N.B.: Advisory Note 2.2 does not apply to tubes incorporating a gallium arsenide (or similar semiconductor) photocathode.

Advisory Note 2.3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of reasonable quantities of non-ruggedized image intensifier tubes controlled by 6A02.a.2.a.3.a for bona fide medical use.

Advisory Note 2.4: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of items controlled by 6A02 not eligible for export as administrative exceptions under Advisory Note 2.1 for Category 6, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Advisory Note 2.5: Licenses will receive favorable consideration, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of reasonable quantities of image intensifier tubes controlled by 6A02.a.2.a.3.a that are non-ruggedized and intended for equipment listed in the Note to 6A02.c.

Advisory Note 2.6: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of items controlled by 6A02 and 6C02, and "software" specially designed and technology "required" therefor controlled by 6D or 6E, except optical sensors and associated equipment controlled by 6A02.a.1, 6A02.a.2, 6A02.a.3 or 6A02.c and "software" specially designed and technology "required" therefor controlled by 6D or 6E

Cameras

Advisory Note 3.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of cameras controlled by 6A03.a.1 or 6A03.a.5, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Advisory Note 3.2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of mechanical framing cameras controlled by 6A03.a.2 designed for civil purposes (i.e., non-nuclear use) with a framing speed of not more than 2 million frames per second.

Advisory Note 3.3: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of cameras controlled by 6A03.a.1 or 6A03.a.5, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Optics

Advisory Note 4.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of equipment controlled by 6B04 and materials controlled by 6C04 and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Advisory Note 4.2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of the following items for installation and use at ground-based bona fide academic or civilian astronomical research sites or in international air- or space-based bona fide academic or civilian astronomical research projects. For the end-use stated in this Advisory Note, the following limits apply:

- a. One optical mirror controlled by 6A04.a.1;
- b. Three optical mirrors controlled by 6A04.a.2;
- c. Three optical mirrors controlled by 6A04.a.4;
- d. Three optical components controlled by 6A04.b;
- e. Ten optical filters controlled by 6A04.d.1.a;
- f. One piece of optical control equipment controlled by 6A04.e.2 for each operational mirror;
- g. Four pieces of optical control equipment controlled by 6A04.e.4;
- h. Three "substrate blanks" controlled by 6C04.a;
- i. A reasonable quantity of the bulk fluoride glass controlled by 6C04.e.2;
- j. A reasonable quantity of the materials controlled by 6C04.f.

N.B.: The quantity limitations listed in Advisory Note 4.2 refer to specific projects.

Advisory Note 4.3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of equipment controlled by 6B04.b for stated bona fide civil end-uses.

Advisory Note 4.4: Licenses will receive favorable consideration for exports to

satisfactory end-users in Country Group W of items controlled by 6A04, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Advisory Note 4.5: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of equipment controlled by 6B04 and materials controlled by 6C04 and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Lasers

Advisory Note 5.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of:

a. "Tunable" pulsed flowing-dye "lasers" having all of the following, and specially designed components therefor:

1. An output wavelength less than 800 nm;
2. A "pulse duration" not exceeding 100 ns; and
3. A peak output power not exceeding 15 MW;

b. CO₂ or CO/CO₂ "lasers" having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW;

c. Equipment controlled by 6B05 and materials controlled by 6C05;

d. "Software", controlled by 6D, that is specially designed and technology, controlled by 6E, that is "required" for the equipment described in paragraphs .a., .b., or .c. of this Advisory Note 5.1.

Advisory Note 5.2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of:

a. "Tunable" pulsed flowing-dye "lasers" having all of the following, and specially designed components therefor:

1. An output wavelength less than 800 nm;
2. A "pulse duration" not exceeding 100 ns; and
3. A peak output power not exceeding 15 MW;

b. CO₂ or CO/CO₂ "lasers" having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW.

Advisory Note 5.3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "lasers", for civil applications, as follows:

a. Neodymium-doped (other than glass), pulse-excited, "Q-switched lasers" controlled by 6A05.c.2.c.2.b having:

1. A pulse duration equal to or more than 1 ns; and
 2. A multiple-transverse mode output with a "peak power" not exceeding 400 MW;
- b. Neodymium-doped (other than glass) "lasers" controlled by 6A05.c.2.c.3.b or 6A05.c.2.c.4.b:

1. Having:
 - a. An output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm; and
 - b. An average or CW output power not exceeding 2 kW; and

2. Being:

a. Pulse-excited, non-"Q-switched" multiple-transverse mode; or

b. Continuously excited, multiple-transverse mode;

c. CO₂ "lasers" controlled by 6A05.a.4:

1. Being in CW multiple-transverse mode; and

2. Having a CW output power not exceeding 15 kW;

d. CO "lasers" having a CW maximum rated single or multimode output power not exceeding 10 kW.

Advisory Note 5.4: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of optical equipment controlled by 6A05.g when intended for use with "lasers" that are not controlled or controlled "lasers" that have been approved for export.

Advisory Note 5.5: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of:

a. "Tunable" pulsed flowing-dye "lasers" having all of the following, and specially designed components therefor:

1. An output wavelength less than 800 nm;
2. A "pulse duration" not exceeding 100 ns; and
3. A peak output power not exceeding 15 MW;

b. CO₂ or CO/CO₂ "lasers" having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW;

c. Equipment controlled by 6B05 and materials controlled by 6C05;

d. "Software", controlled by 6D, that is specially designed and technology, controlled by 6E, that is "required" for the equipment described in paragraph a., b., or c. of this Advisory Note 5.5.

Magnetometers

Advisory Note 6.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled by 6A06, and "software" specially designed and technology "required" therefor that are controlled by 6D or 6E.

Advisory Note 6.2: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of items controlled by 6A06, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Gravimeters

Advisory Note 7.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled by 6A07 or 6B07, and "software" specially designed and technology "required" therefor that are controlled by 6D or 6E.

Advisory Note 7.2: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of items controlled by 6A07 or 6B07, and "software" specially designed and technology "required" therefor that are controlled by 6D or 6E.

Radar

Advisory Note 8.1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W, for purposes such as air traffic control, of radar equipment controlled by 6A08 or 6B08, and "software" specially designed and technology "required" therefor that are controlled 6D or 6E.

Advisory Note 8.2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of Air Traffic Control (ATC) "software" application "programs" controlled by 6D03.d.1, provided that:

- a. The number of "system tracks" does not exceed 700;
- b. The number of primary radar inputs does not exceed 32; and
- c. The "software" is further limited to "object code" and the minimum amount of "source code" necessary for installation, operation or maintenance.

Advisory Note 8.3: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q, for purposes such as air traffic control, of radar equipment controlled by 6A08 or 6B08, and "software" specially designed and technology "required" therefor that are controlled 6D or 6E.

31. In Category 7 (Navigation and Avionics), under the heading "Notes for Category 7" that follows ECCN 7E94F, a new Advisory Note 3 is added immediately following Advisory Note 2 to read as follows:

Notes for Category 7

* * * * *

Advisory Note 3: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of items controlled for national security reasons by Category 7, except:

- a. Inertial navigation systems controlled by 7A03, and "software" specially designed and technology "required" therefor that are controlled by 7D or 7E;
- b. Technology controlled by 7E for accelerometers and gyros controlled by 7A01 and 7A02;
- c. Technology controlled by 7E04.a.4.

32. In Category 8 (Marine Technology), under the heading "Notes for Category 8" that follows ECCN 8E96G, a new Advisory Note 4 is added immediately following Advisory Note 3 to read as follows:

Notes for Category 8

* * * * *

Advisory Note 4: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of items controlled for national security reasons by Category 8, except:

- a. Submersible vehicles controlled by 8A01.a, 8A01.b, 8A01.c, or 8A01.d;
- b. Submersible systems or equipment controlled by 8A02.a, 8A02.b, 8A02.c, 8A02.i, or 8A02.j;
- c. "Software" specially designed and technology "required" for the submersible vehicles, systems or equipment described in

this Advisory Note 4.a or .b that are controlled by 8D or 8E;

d. Other technology for submersible vehicles, systems or equipment controlled by 8E02.

33. In Category 9 (Propulsion Systems and Transportation Equipment), under the heading "Advisory Notes for Category 9" that follows ECCN 9E96G, a new Advisory Note 4 is added immediately following Advisory Note 3 to read as follows:

Advisory Notes for Category 9

Advisory Note 4: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group Q of items controlled for national security reasons by Category 9, *except*:

- a. Commercial communication satellites not excepted from control by 9A04.a;
- b. Test facilities or equipment controlled by 9B01, 9B02, 9B03, 9B05, or 9B08;
- c. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 4.a or .b that are controlled by 9D or 9E;
- d. Other technology controlled by 9E03.a, and "software" specially designed therefor that is controlled by 9D.

34. Supplement No. 3 to § 799.1 is amended:

- a. By revising the definitions of the following terms: "accuracy", "asynchronous transfer mode", "deformable mirrors", "fibrous and filamentary materials", "information security", "matrix", "maximum bit transfer rate", "media access unit", "microcomputer microcircuit", "personalized smart card", and "signal processing"; and
- b. By adding in alphabetical order the definitions of the following terms: "ATM", "basic scientific research", "CE", "CTP", "FMU", "focal plane array", "ISDN", "MBTR", "required", "SDH", and "SONET" to read as follows:

Supplement No. 3 to § 799.1—Definitions

Accuracy (Cat. 2 and 6)—"Accuracy" is usually measured in terms of inaccuracy. It is defined as the maximum deviation, positive or negative, of an indicated value from an accepted standard or true value.

Asynchronous transfer mode (ATM) (Cat. 5)—A transfer mode in which the information is organized into cells; it is asynchronous in the sense that the recurrence of cells depends on the required or instantaneous bit rate. (CCITT Recommendation L.113)

ATM (Cat. 5)—See "Asynchronous transfer mode".

Basic scientific research (GTN)—Experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or

observable facts, not primarily directed towards a specific practical aim or objective.

CE—See "computing element".

CTP—See "composite theoretical performance".

Deformable mirrors (Cat. 6)—

- (a) Mirrors:
 - (1) Mirrors having a single continuous optical reflecting surface that is dynamically deformed by the application of individual torques or forces to compensate for distortions in the optical waveform incident upon the mirror; or
 - (2) Mirrors having multiple optical reflecting elements that can be individually and dynamically repositioned by the application of torques or forces to compensate for distortions in the optical waveform incident upon the mirror.
- (b) Deformable mirrors are also known as adaptive optic mirrors.

Fibrous or filamentary materials (Cats. 1 and 8)—The term "fibrous and filamentary materials" includes:

- a. Continuous monofilaments;
- b. Continuous yarns and rovings;
- c. Tapes, fabrics, random mats and braids;
- d. Chopped fibers, staple fibers and coherent fiber blankets;
- e. Whiskers, either monocrystalline or polycrystalline, of any length;
- f. Aromatic polyamide pulp.

FMU—See "flexible manufacturing unit".

Focal plane array (Cat. 6)—A linear or two-dimensional planar layer, or combination of planar layers, of individual detector elements, with or without readout electronics, that work in the focal plane.

N.B.: This definition does not include a stack of single detector elements or any two, three, or four element detectors provided time delay and integration is not performed within the element.

Information security (Cat. 5)—All the means and functions ensuring the accessibility, confidentiality or integrity of information or communications, excluding the means and functions intended to safeguard against malfunctions. This includes "cryptography", "cryptanalysis", protection against compromising emanations and computer security.

N.B.: "Cryptanalysis": the analysis of a cryptographic system or its inputs and outputs to derive confidential variables or sensitive data, including clear text. (ISO 7498-2-1988 (E), paragraph 3.3.18)

ISDN—See "Integrated Services Digital Network".

Matrix (Cat. 1, 2, 8, and 9)—A substantially continuous phase that fills the space between particles, whiskers or fibers.

Maximum bit transfer rate (MBTR) (Cat. 4)—Of solid state storage equipment: the

number of data bits per second transferred between the equipment and its controller. Of a disk drive: the internal data transfer rate calculated as follows:

"MBTR" (bits per second)= $B \times R \times T$, where:
 B=Maximum number of data bits per track available to read or write in a single revolution;
 R=Revolutions per second;
 T=Number of tracks that can be used or written simultaneously.

MBTR—See "maximum bit transfer rate".

Media access unit (Cat. 5)—Equipment that contains one or more communication interfaces ("network access controller", "communications channel controller", modem or computer bus) to connect terminal equipment to a network.

Microcomputer microcircuit (Cat. 3)—A "monolithic integrated circuit" or "multichip integrated circuit" containing an arithmetic logic unit (ALU) capable of executing a series of general purpose instructions from an external storage.

N.B. 1: The "microprocessor microcircuit" normally does not contain integral user-accessible storage, although storage present on-the-chip may be used in performing its logic function.

N.B. 2: This definition includes chip sets that are designed to operate together to provide the function of a "microprocessor microcircuit".

Personalized smart card (Cat. 5)—A smart card containing a microcircuit, in accordance with ISO/IEC 7816, that has been programmed by the issuer and cannot be changed by the user.

Required: As applied to "software", refers to only that portion of "software" which is peculiarly responsible for achieving or exceeding the control performance levels, characteristics, or function. Such "required" "software" may be shared by different products.

SDH—See "Synchronous digital hierarchy".

Signal processing (Cat. 3, 4, and 5)—The processing of externally derived information-bearing signals by algorithms such as time compression, filtering, extraction, selection, correlation, convolution or transformations between domains (e.g., fast Fourier transform or Walsh transform).

SONET—See "synchronous optical network".

Dated: September 30, 1993.

Iain S. Baird,
 Acting Assistant Secretary for Export Administration.

[FR Doc. 93-24428 Filed 10-4-93; 8:54 am]

BILLING CODE 3510-07-P

Federal Register

Wednesday
October 6, 1993

Part V

Department of Education

34 CFR Part 668, et al.

Student Assistance General Provisions;
Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 675, 676, 682, and 690

Student Assistance General Provisions, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and Federal Pell Grant Programs

AGENCY: Department of Education.

ACTION: Notice of relief from regulatory provisions.

SUMMARY: The Secretary of Education announces regulatory relief from specific regulations governing the Federal Perkins Loan, Federal Work-Study (FWS), Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Family Education Loan (FFEL), and Federal Pell Grant programs, for the 1993-94 award year, to assist institutions and individuals who suffered financial harm from the Midwest floods of 1993.

EFFECTIVE DATE: This notice takes effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Kathy S. Gause, Program Specialist, Grants Branch, Policy Development Division, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, room 4018), Washington, DC 20202-5447. Telephone (202) 708-4690. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Many institutions of higher education, student financial aid applicants, and recipients have been adversely affected by the flooding in the Midwest. The President signed the Emergency Supplemental Appropriations for Relief from the Major, Widespread Flooding in the Midwest Act of 1993 (Pub. L. 103-75)

on August 12, 1993. The Act allows the Secretary to reallocate any excess funds under the Federal Perkins Loan and the FWS programs from the 1992-93 award year to assist individuals who suffered financial harm as a result of the Midwest floods of 1993. The Department has the authority to reallocate these funds to institutions until the end of this fiscal year on September 30, 1993. Institutions were informed of the application procedures for obtaining reallocated funds to assist Midwest flood victims in a letter to financial aid administrators (CB-93-15) dated August 1993.

The Emergency Supplemental Appropriations Act, however, does not expressly authorize the reallocation of funds returned under the FSEOG Program. The Higher Education Act of 1965, as amended (HEA), in section 413D permits the Secretary, in accordance with regulations, to reallocate excess FSEOG funds returned by an institution to other institutions. Under current FSEOG regulations (34 CFR 676.4), the Secretary reallocates funds on a pro rata basis, i.e., the amount of an institution's fair-share shortfall as a percentage of the fair-share shortfalls of all participating institutions with an unmet FSEOG request. The Secretary has decided to promulgate standards to allow excess funds under the FSEOG Program from the 1992-93 award year to be reallocated during the 1993-94 award year to assist students adversely affected by the Midwest floods. The funds will be reallocated to institutions that enrolled students adversely affected by the floods and submitted applications in the format required by the Secretary in a letter to financial aid administrators (CB-93-15) dated August 1993. If the total funds requested exceed the total funds available, the funds will then be reallocated on a pro rata basis only among these institutions to provide assistance to students whose financial need has increased as a result of the 1993 Midwest floods.

The Secretary recognizes the severe impact the flooding has had on institutions and their students located in the designated natural disaster areas. Many institutions and individuals adversely affected by the flooding are facing immediate problems concerning the disbursement and repayment of student loans.

The title IV student financial aid programs affected by this notice are the FFEL Program (consisting of the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program); the Federal Pell Grant Program; and the Federal Perkins Loan, FWS, and FSEOG programs (known collectively as the campus-based programs). To assist both institutions and individuals, this notice also provides certain other regulatory relief to institutions in their administration of these student financial aid programs.

The Secretary has already provided certain regulatory relief to lenders and guaranty agencies in the FFEL Program under section 432(a)(6) of the HEA and 34 CFR 682.406(b) and 682.413(f). The guaranty agency directors were informed of this relief in a letter dated July 21, 1993.

Covered Individuals

This notice is intended to assist institutions and individuals that have been adversely affected by the Midwest floods of 1993. In regard to the Midwest floods, this notice will apply to institutions that were unable to maintain normal operations because they were located in the designated flood disaster counties in the states of Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, or Wisconsin on the date on which the President declared the existence of a major disaster. This notice of relief also applies only to individuals who suffered financial harm from the disaster and at the time the Midwest flood of 1993 occurred, were residing, attending an institution of higher education, or employed in the counties designated as disaster areas (or, in the case of an individual who is a dependent student, whose parent or stepparent suffered financial harm from such disaster and resided or was employed in such an area at that time). This notice of regulatory relief will be applicable for awards made and collection activities conducted during the 1993-94 award year (the period from July 1, 1993-June 30, 1994). The following counties have been designated as flood disaster areas:

Flood Disaster Areas

State	Counties
Illinois	Adams, Alexander, Boone, Calhoun, Carroll, Hancock, Henderson, Henry, Jackson, Jersey, Jo Daviess, Lake, Madison, McHenry, Mercer, Monroe, Pike, Randolph, Rock Island, St. Clair, Stephenson, Union, Whiteside, Winnebago, Greene, Knox, Morgan, Ogle, Scott, Warren, Brown, Cass, Fulton, Mason, Schuyler, Massac, Pope, Pulaski, Cook.

State	Counties
Iowa	All counties.
Kansas	Dickinson, Doniphan, Douglas, Geary, Harvey, Johnson, Leavenworth, Ottawa, Riley, Saline, Wyandotte, Pottawatomie, Osborne, Wabaunsee, Lincoln, Marshall, Ellsworth, Jefferson, Rush, Russell, Sedgwick, Sumner, Atchison, Brown, Clay, Cloud, Jackson, Nemaha, Jewell, Republic, McPherson, Morris, Edwards, Ellis, Lane, Lyon, Marion, Ness, Rooks, Stafford, Washington, Osage, Reno, Pawnee, Rice, Shawnee, Mitchell.
Minnesota	Big Stone, Blue Earth, Brown, Carver, Chippewa, Clay, Cottonwood, Dakota, Faribault, Goodhue, Houston, Jackson, Le Sueur, Lincoln, Lyon, Martin, McLeod, Murray, Nicollet, Nobles, Pipestone, Ramsey, Redwood, Renville, Rock, Scott, Sibley, Stevens, Swift, Traverse, Washington, Watonwan, Yellow Medicine, Becker, Lac qui Parle, Wabasha, Aitkin, Grant, Mahanomen, Meeker, Norman, Polk, Rice, Waseca, Steele, Winona, Freeborn, Kittson, Marshall, Mower, Roseau, Otter Tail, Wright.
Missouri	Andrew, Atchison, Barry, Bates, Boone, Buchanan, Callaway, Camden, Carroll, Cape Girardeau, Chariton, Clark, Clay, Cole, Cooper, Daviess, Franklin, Gasconade, Gentry, Harrison, Holt, Howard, Jackson, Jefferson, Lafayette, Lewis, Lincoln, Marion, McDonald, Miller, Moniteau, Montgomery, Newton, Nodaway, Osage, Perry, Pike, Platte, Pulaski, Ralls, Ray, Saline, Shelby, St. Charles, St. Louis, St. Louis City, Ste. Genevieve, Stone, Warren, Worth, Adair, Caldwell, Johnson, Livingston, Macon, Pemiscot, Pettis, Putnam, Scott, Scotland, Audrain, Cass, Clinton, DeKalb, Grundy, Hickory, Jasper, Knox, Linn, Mercer, Morgan, Randolph, City of Kansas City, Benton, Henry, New Madrid, Sullivan, Schuyler, Maries, Mississippi, Monroe, St. Clair, Caldwell, Crawford, Wayne, Stoddard, St. Francois.
Nebraska	Adams, Buffalo, Cass, Hall, Kearney, Lancaster, Phelps, Sarpy, Seward, Washington, Boyd, Butler, Clay, Colfax, Cuming, Douglas, Hamilton, Fillmore, Nemaha, Otoe, Pawnee, Platte, Polk, Richardson, Saunders, Stanton, York, Dawson, Gage, Jefferson, Dodge, Franklin, Frontier, Gosper, Sherman, Chase, Hayes, Johnson, Dundy, Furnas, Harlan, Merrick, Saline, Boone, Burt, Howard, Nuckolls, Thayer, Webster, Greeley, Nance, Custer.
North Dakota	Barnes, Burleigh, Cass, Dickey, Emmons, Grant, Hettinger, Kidder, La Moure, Logan, McIntosh, Morton, Ransom, Richland, Sargent, Sioux, Stutsman, Benson, Grand Forks, Griggs, McLean, Mercer, Nelson, Oliver, Ramsey, Sheridan, Stark, Steele, Traill, Walsh, Wells, Cavalier, Eddy, Burke, Pembina, Rofette, Towner, Divide, Williams.
South Dakota	Bon Homme, Brookings, Clay, Davison, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, Yankton, Brown, Charles Mix, Codington, Day, Deuel, Douglas, Grant, Hamlin, Marshall, Roberts, Spink, Aurora, Campbell, Clark, Corson, Edmunds, Hand, Beadle, Jerauld, McPherson, Gregory.
Wisconsin	Adams, Buffalo, Calumet, Chippewa, Clark, Columbia, Crawford, Dane, Dodge, Dunn, Eau Claire, Fond du Lac, Grant, Green, Green Lake, Iowa, Jackson, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Lincoln, Marathon, Marquette, Milwaukee, Outagamie, Pierce, Portage, Price, Racine, Rock, Rusk, Sauk, St. Croix, Trempealeau, Vernon, Waupaca, Waushara, Winnebago, Wood, Richland, Monroe, Menominee, Shawano.

Note: For further updates to the list of designated disaster areas, institutions may contact the Department on its toll-free number at 1-800-433-3243 between 9 a.m. and 5:30 p.m., Eastern time, Monday through Friday. Individuals who use a telecommunications device for the deaf (TDD) may call 1-800-730-8913 between 9 a.m. and 5:30 p.m., Eastern time, Monday through Friday.

The Secretary provides the following enforcement relief from the regulations governing the student financial aid programs under title IV of the HEA:

I. 34 CFR Part 668—Student Assistance General Provisions

A. 34 CFR 668.19 Financial Aid Transcript

Under current regulations, before a student who previously attended another eligible institution may receive any title IV, HEA program funds, the institution to which the student is transferring must make an effort to obtain the student's financial aid transcript. The Secretary is waiving the requirement to obtain financial aid transcripts before disbursing funds for individuals covered by this notice for the 1993-94 award year. If the financial aid transcript is not available as a result of damage caused by the Midwest floods, the institution may disburse title IV funds. Any institution affected by this situation must document in the

student's file that the financial aid transcript is unavailable due to damage stemming from the natural disaster. In addition, the student will still be expected to provide statements concerning all prior financial aid received and the institution will be expected to retain this information in the student's file.

B. 34 CFR 668.51-668.61—Subpart E Selection of Applicants for Verification

The Secretary is waiving verification requirements under 34 CFR 668.51-668.61 during the 1993-94 award year for those applicants who are selected for verification and whose records were lost or destroyed because of the Midwest floods. The institution must document in the student's file that the records are unavailable due to damage stemming from the natural disaster. For these students, Verification Status Code "S" may be used to report a Federal Pell Grant disbursement on the SAR.

II. 34 CFR Part 690—Federal Pell Grant Program

34 CFR 690.83 Submission of Reports

The Secretary modifies the deadline in 34 CFR 690.83(a)(1)(i) that an institution submit all SAR Payment Vouchers for an award year by September 30 following the end of the award year in which the grant is made. The Secretary will extend this reporting

date, on a "case-by-case" basis, for institutions affected by the Midwest floods.

III. 34 CFR Parts 674 and 676—Federal Perkins Loan and FSEOG Programs

A. Federal Perkins Loan Program

1. 34 CFR 674.31 Promissory Note

Under 34 CFR 674.31(b)(2), the terms of a student's promissory note require that repayment of a loan must begin six (6) or nine (9) months after a borrower ceases to be at least a half-time regular student and that the repayment period normally ends 10 years later. The Secretary is modifying this provision that specifies the commencement of a borrower's repayment period to provide that any borrower who was in an "in-school" status at the time the natural disaster occurred and was unable to complete course requirements or enroll in classes due to the flooding will continue to be in an "in-school" status until such time as the borrower withdraws, or until the end of the 1993-94 award year, whichever is earlier. The institution must document this reason for continued "in-school" status in the student's file.

2. 34 CFR 674.42 Contact With the Borrower

The Secretary will not require an institution to comply with the

provisions of 34 CFR 674.42(b) that require an institution to make contact with the borrower during an initial or post-deferment grace period if that grace period coincides with the Midwest floods. These requirements shall be suspended for a period of time not to exceed the earlier of either the date on which the institution is able to resume normal contact with the borrower or January 1, 1994. An institution must document the reason for suspension of these activities in the borrower's file.

3. 34 CFR 674.41-674.50 Subpart C—Due Diligence

The Secretary will not enforce 34 CFR part 674 subpart C—Due Diligence. An institution may suspend the collection activities for borrowers already in default at the time of the natural disaster. These requirements shall resume on January 1, 1994. An institution must document the reason for suspension of these activities in the borrower's file.

4. 34 CFR 674.34-674.37 Deferment of Repayment

The Secretary modifies the provisions for hardship deferment in 34 CFR 674.34(i), 674.35(e), and 674.36(e) and authorizes an institution to grant an administrative hardship deferment to a borrower who is in repayment at the time of the natural disaster but who is unable to continue to repay the loan due to the disaster. Interest will accrue during any period of administrative hardship deferment. 34 CFR 674.37 requires that a borrower submit a written request for deferment. Under this administrative hardship deferment, a borrower may request this deferment orally and will not be required to submit a deferment documentation form to be considered eligible for this deferment. The administrative hardship deferment may be granted for a period of time not to exceed the earlier of either the date on which the institution is able to resume normal due-diligence activities or June 30, 1994. Documentation must be maintained according to the governing regulations.

B. FSEOG Program

34 CFR 676.4 Allocation and Reallocation

For the 1993-94 award year, FSEOG funds returned by institutions from the 1992-93 award year will be reallocated to institutions that enrolled students adversely affected by the 1993 Midwest floods and submitted applications in the format required by the Secretary. If the total funds requested exceed the total amount of funds available, the funds

will then be reallocated on a pro rata basis only among these institutions to provide assistance to students whose financial need has increased as a result of the floods.

IV. 34 CFR Part 682—Federal Family Education Loan (FFEL) Program

A. 34 CFR 682.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

To assist affected individuals, the Secretary modifies the requirement in 34 CFR 682.604(c)(3) (i) and (ii) and 682.604(e)(4) that loan proceeds be delivered to the borrower within 45 days of the institution's receipt of the check but will instead permit the institution to deliver loan proceeds to the borrower up to 120 days from the institution's receipt of the check. Documentation must be maintained according to the governing regulations. The Department still expects delivery of a borrower's loan proceeds as soon as possible.

Also, because some institutions may have to delay opening or have ceased operation for an undetermined period of time, the Secretary authorizes lenders not to disburse loan checks to institutions or to parent PLUS borrowers in the affected areas until the lenders receive revised disbursement schedules from the affected institutions. The Secretary instructs guaranty agencies and lenders to revise information on loan periods, graduation dates, and so forth, on the loan applications related to these disbursements as the information becomes available. This change means that a borrower need not reapply for the loan. This change also will allow a student to receive his or her loan proceeds according to a schedule that fits the institution's new academic schedule.

B. 34 CFR 682.605 Determining the Date of a Student's Withdrawal

The Secretary modifies the requirement in 34 CFR 682.605(b) to permit an institution affected by the disaster to determine that the student has withdrawn within 90 days (instead of 45) after the expiration of the academic term for an institution that uses academic terms, except that 60 days (instead of 30) after the first day of the next scheduled term may be used in the case of a summer break, and 50 days (instead of 25) after the student's last date of attendance may be used for an institution that measures academic progress in clock hours, but does not use a semester, trimester, or quarter system.

C. 34 CFR 682.607 Payment of a Refund to a Lender

The Secretary modifies the deadlines by which an affected institution shall pay a refund that is due to a lender, within 60 days after the student's withdrawal as determined under 34 CFR 682.605(b) (1)-(3) or within 30 days in the case of a student who does not return to the institution at the expiration of an approved leave of absence under 34 CFR 682.605(c). Instead, the Secretary will require the institution to pay a refund to the lender within 120 days (instead of 60) after the student's withdrawal or within 60 days (instead of 30) after the last day of the leave of absence.

D. 34 CFR 682.610 Records, Reports, and Inspection Requirements for Participating Schools

The Secretary modifies the deadline in 34 CFR 682.610(c) that an institution complete and submit required Student Status Confirmation Reports (SSCRs) to the Secretary or guaranty agency within 30 days of the institution's receipt of the report but will instead require completion and submission of these reports within 90 days. Reports of changes of borrower status if the institution does not expect to submit its next SSCR within the next 60 days may also be submitted within 90 days (instead of 30 days).

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the severe impact of the ongoing flooding in the Midwest has caused a national emergency that has been recognized by the Congress. The Secretary, recognizing the severe devastation of the Midwest flood victims, finds that soliciting further public comment with respect to this notice of relief from regulatory requirements is impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

This notice has been reviewed in accordance with Executive Order 12291. It is not classified as major because it does not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act Certification

The Secretary certifies that this notice will not have a significant economic impact on a substantial number of small

entities. The small entities affected by this notice are small institutions of postsecondary education. This notice provides temporary regulatory relief and will not increase institutions' workload or costs associated with administering the title IV, HEA programs. It will therefore not have a significant economic impact on the entities affected.

Assessment of Educational Impact

The Secretary has determined that this document does not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education

Loan Program; 84.038 Federal Perkins Loan Program; 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; 84.063 Federal Pell Grant Program)

Dated: September 29, 1993.

Richard W. Riley,
Secretary of Education.

[FR Doc. 93-24454 Filed 10-5-93; 8:45 am]

BILLING CODE 4000-01-P

Federal Register

Wednesday
October 6, 1993

Part VI

The President

Executive Order 12871—Labor-
Management Partnerships

Proclamation 6602—Child Health Day,
1993

Presidential Documents

Title 3—**Executive Order 12871 of October 1, 1993****The President****Labor-Management Partnerships**

The involvement of Federal Government employees and their union representatives is essential to achieving the National Performance Review's Government reform objectives. Only by changing the nature of Federal labor-management relations so that managers, employees, and employees' elected union representatives serve as partners will it be possible to design and implement comprehensive changes necessary to reform Government. Labor-management partnerships will champion change in Federal Government agencies to transform them into organizations capable of delivering the highest quality services to the American people.

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and in order to establish a new form of labor-management relations throughout the executive branch to promote the principles and recommendations adopted as a result of the National Performance Review, it is hereby ordered:

Section 1. THE NATIONAL PARTNERSHIP COUNCIL. (a) *Establishment and Membership.* There is established the National Partnership Council ("Council"). The Council shall comprise the following members appointed by the President:

- (1) Director of the Office of Personnel Management ("OPM");
- (2) Deputy Secretary of Labor;
- (3) Deputy Director for Management, Office of Management and Budget;
- (4) Chair, Federal Labor Relations Authority;
- (5) Federal Mediation and Conciliation Director;
- (6) President, American Federation of Government Employees, AFL-CIO;
- (7) President, National Federation of Federal Employees;
- (8) President, National Treasury Employees Union;
- (9) Secretary-Treasurer of the Public Employees Department, AFL-CIO; and
- (10) A deputy Secretary or other officer with department- or agency-wide authority from two executive departments or agencies (hereafter collectively "agency"), not otherwise represented on the Council.

Members shall have 2-year terms on the Council, which may be extended by the President.

(b) *Responsibilities and Functions.* The Council shall advise the President on matters involving labor-management relations in the executive branch. Its activities shall include:

- (1) supporting the creation of labor-management partnerships and promoting partnership efforts in the executive branch, to the extent permitted by law;

(2) proposing to the President by January 1994 statutory changes necessary to achieve the objectives of this order, including legislation consistent with the National Performance Review's recommendations for the creation of a flexible and responsive hiring system and the reform of the General Schedule classification system;

(3) collecting and disseminating information about, and providing guidance on, partnership efforts in the executive branch, including results achieved, to the extent permitted by law;

(4) utilizing the expertise of individuals both within and outside the Federal Government to foster partnership arrangements; and

(5) working with the President's Management Council toward reform consistent with the National Performance Review's recommendations throughout the executive branch.

(c) *Administration.* (1) The President shall designate a member of the Council who is a full-time Federal employee to serve as Chairperson. The responsibilities of the Chairperson shall include scheduling meetings of the Council.

(2) Council shall seek input from nonmember Federal agencies, particularly smaller agencies. It also may, from time to time, invite experts from the private and public sectors to submit information. The Council shall also seek input from companies, nonprofit organizations, State and local governments, Federal Government employees, and customers of Federal Government services, as needed.

(3) To the extent permitted by law and subject to the availability of appropriations, OPM shall provide such facilities, support, and administrative services to the Council as the Director of OPM deems appropriate.

(4) Members of the Council shall serve without compensation for their work on the Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law, for persons serving intermittently in Government service.

(5) All agencies shall, to the extent permitted by law, provide to the Council such assistance, information, and advice as the Council may request.

(d) *General.* (1) I have determined that the Council shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2).

(2) Notwithstanding any other executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, that are applicable to the Council, shall be performed by the Director of OPM, in accordance with guidelines and procedures issued by the Administrator of General Services.

(3) The Council shall exist for a period of 2 years from the date of this order, unless extended.

(4) Members of the Council who are not otherwise officers or employees of the Federal Government shall serve in a representative capacity and shall not be considered special Government employees for any purpose.

Sec. 2. IMPLEMENTATION OF LABOR-MANAGEMENT PARTNERSHIPS THROUGHOUT THE EXECUTIVE BRANCH. The head of each agency subject to the provisions of chapter 71 of title 5, United States Code shall:

(a) create labor-management partnerships by forming labor-management committees or councils at appropriate levels, or adapting existing councils or committees if such groups exist, to help reform Government;

(b) involve employees and their union representatives as full partners with management representatives to identify problems and craft solutions to better serve the agency's customers and mission;

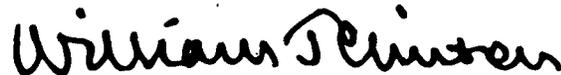
(c) provide systematic training of appropriate agency employees (including line managers, first line supervisors, and union representatives who are

Federal employees) in consensual methods of dispute resolution, such as alternative dispute resolution techniques and interest-based bargaining approaches;

(d) negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1), and instruct subordinate officials to do the same; and

(e) evaluate progress and improvements in organizational performance resulting from the labor-management partnerships.

Sec. 3. NO ADMINISTRATIVE OR JUDICIAL REVIEW. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.



THE WHITE HOUSE,
October 1, 1993.

[FR Doc. 93-24751
Filed 10-4-93; 5:00 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6602 of October 4, 1993

Child Health Day, 1993

By the President of the United States of America

A Proclamation

Our children are our future. Therefore, making sure that our children are healthy must be a national concern. For 65 years, Presidents of the United States have proclaimed one day every year as "Child Health Day," a time to focus on the health and well-being of our Nation's children. Over the years, we have recognized again and again that it is better to try to guarantee the health of our children than to attempt to restore their health once it has been jeopardized. A healthy childhood charts a path for a healthy adult life. Prevention is, therefore, primary. Through preventive measures, we help children avoid the pain and suffering of disease and disability; we stop unnecessary spending; and we decrease the number of childhood deaths.

We possess the ability to prevent many childhood diseases and injuries, and we must use this ability. Every child needs access to primary health care. The necessary immunizations against nine different contagious diseases must be given to children at the recommended ages. Injuries, the greatest threat to our children's well-being, can be reduced by introducing into our daily routines various safety measures. For example, the use of car seats, seat belts, and bicycle helmets helps to guard against hazards to which children are especially vulnerable. There are dangers in the home, as well, such as careless storage of poisons and unlocked staircase gates. Paying attention to our children and to potential risks to their safety can help to safeguard them in our homes.

We can prevent our children from making unhealthy choices, both by the rules we set for them and by the rules we follow ourselves. Many of the behaviors that will affect their health—choices about what to eat; the dangers of smoking, drinking, using illegal drugs, or irresponsible sexual behavior; how to handle their feelings and the pressure of their peers—will be learned from the models they see around them. We have an opportunity, as well as a responsibility, to shape the future for our children. In our personal lives, that responsibility extends to those whose lives we touch in our families and in our communities.

The Congress, by joint resolution approved May 18, 1928, as amended (36 U.S.C. 143), has called for the designation of the first Monday in October as "Child Health Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Monday, October 4, 1993, as Child Health Day. On that day and every day throughout the year, I urge all Americans to renew their commitment to protecting and developing our most valuable asset—our children.

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

William Clinton

[FR Doc. 93-24784

Filed 10-5-93; 10:44 am]

Billing code 3195-01-P

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LIST OF PUBLIC LAWS

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session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

H.R. 2295/P.L. 103-87

Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1994, and making supplemental appropriations for such programs for the fiscal year ending September 30, 1993, and for other purposes. (Sep. 30, 1993; 107 Stat. 931; 46 pages)

H.J. Res. 267/P.L. 103-88

Making continuing appropriations for the fiscal year 1994, and for other purposes. (Sep. 30, 1993; 107 Stat. 977; 4 pages)

H.R. 3019/P.L. 103-89

Performance Management and Recognition System Termination Act (Sep. 30, 1993; 107 Stat. 981; 5 pages)

H.R. 168/P.L. 103-90

To designate the Federal building to be constructed between Gay and Market Streets and Cumberland and Church Avenues in Knoxville, Tennessee, as the "Howard H. Baker, Jr. United States Courthouse". (Oct. 1, 1993; 107 Stat. 986; 1 page)

H.R. 873/P.L. 103-91

Gallatin Range Consolidation and Protection Act of 1993 (Oct. 1, 1993; 107 Stat. 987; 7 pages)

H.J. Res. 220/P.L. 103-92

To designate the month of August as "National Scleroderma Awareness Month", and for other purposes. (Oct. 1, 1993; 107 Stat. 994; 1 page)

S. 184/P.L. 103-93

Utah Schools and Lands Improvement Act of 1993 (Oct. 1, 1993; 107 Stat. 995; 6 pages)

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