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Presidential Documents

Title 3—

The President

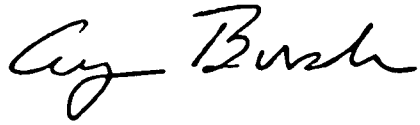
Presidential Determination No. 92–9 of December 16, 1991

Migration and Refugee Assistance for Yugoslav Refugees

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I determine that it is important to the national interest that up to $7,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund (the Fund) to meet unexpected urgent needs of refugees and other displaced persons resulting from the civil conflict in Yugoslavia. These funds may be used to provide U.S. contributions to the United Nations High Commissioner for Refugees, the International Committee of the Red Cross, other international organizations, governments and governmental organizations, and private voluntary organizations, as required.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this memorandum in the **Federal Register.**



THE WHITE HOUSE,
Washington, December 16, 1991.

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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 321

[Docket No. 91-105]

Importation of Potatoes From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning importation of potatoes by adding restrictions on the importation of potatoes and potato plants from Canada. This emergency action was prompted by new information about the necrotic strain of potato virus Y in Canada, and is necessary to prevent the introduction of this disease into the United States.

DATES: This interim rule is effective December 27, 1991. Consideration will be given only to comments received on or before March 6, 1992.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies of written 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 Number 91-105. 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.

FOR FURTHER INFORMATION CONTACT: James Petit de Mange, Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 321 (referred to below as the potato regulations) restrict the importation of potatoes from foreign countries to prevent the introduction into the United States of potato wart and other injurious potato diseases and insect pests. For purposes of the potato regulations, the term "potatoes" refers only to tubers. As defined in this part, a seed potato is a potato tuber intended for planting and growing potato plants. A table stock potato is a potato tuber intended for sale as a fresh vegetable. A processing potato is a potato tuber intended to produce potato products, incapable of propagation, not to include table stock. The regulations in 7 CFR part 319.37 (referred to below as the nursery stock regulations) govern the importation of living plants, plant parts, and seed for, or capable of, propagation, including all parts of potato plants other than tubers.

Prior to the effective date (April 25, 1991) of an interim rule and request for comments published in the April 30, 1991 **Federal Register** (56 FR 19789-19791, Docket No. 91-038), § 321.8 of the potato regulations allowed potato tubers to be imported without restrictions from Canada (except from Newfoundland and the Land District of South Saanich on Vancouver Island of British Columbia). Also prior to the effective date of that interim rule, the nursery stock regulations allowed the importation of potato plants (other than tubers) from Canada without restriction.

The previous interim rule prohibited the importation of potato plants and prohibited or restricted the importation of certain tubers from New Brunswick and Prince Edward Island in order to prevent the introduction of the necrotic strain of potato virus Y (PVY-N), which is not known to exist in the United States. This virus, which presents a plant pest risk, had been identified in potatoes in New Brunswick and Prince Edward Island. PVY-N, also known as tobacco veinal necrosis, can infect potatoes, tobacco, tomatoes, and peppers. PVY-N can be introduced into new locations by the movement of infected potato tubers and plants. The PVY-N virus in spread slowly in nature by aphids feeding on infected plants and transmitting the virus to healthy plants. Long-distance spread of the disease has resulted from the movement of infected potato tubers.

Preliminary investigations by Agriculture Canada indicated that PVY-N detected on farms in Prince Edward Island and New Brunswick had been traced back to a single farm in Prince Edward Island, and that the spread of PVY-N had been the result of movement of Atlantic variety seed potatoes from that farm.

Based on this information, the interim rule effective on April 25, 1991, did the following:

(1) Prohibited the importation of the Atlantic variety of seed potatoes from Prince Edward Island,

(2) Restricted the importation of other varieties of seed potatoes from Prince Edward Island to seed potatoes grown in Prince Edward Island Seed Potato Inspection Districts 5 or 6,

(3) Prohibited the importation of seed potatoes from New Brunswick if they were the progeny of or were grown on the same farm with any Atlantic variety seed potato produced on Prince Edward Island in 1988 or later,

(4) Prohibited the importation of seed potatoes from other provinces which were otherwise eligible to ship potatoes to the United States if the potatoes were the progeny of any Atlantic variety seed potato produced on Prince Edward Island in 1988 or later,

(5) Prohibited the importation of table stock from Prince Edward Island or New Brunswick unless the potatoes were not grown in Prince Edward Island or New Brunswick or unless the potatoes were treated with sprout inhibitor,

(6) Prohibited the importation of processing potatoes from Prince Edward Island or New Brunswick unless the potatoes were not grown in Prince Edward Island or New Brunswick, or were treated with sprout inhibitor, or were moved under certain restrictions from the first port of entry in the United States to a processing plant, and

(7) Required a permit and phytosanitary certificate for the importations.

The interim rule also prohibited the importation of potato plants (other than tubers) from Prince Edward Island and New Brunswick.

Follow-up Canadian surveys since the publication of that interim rule have detected PVY-N in Ontario, Nova Scotia, and Quebec, and in potato varieties other than Atlantic. Most of

these new detections can be traced back to potatoes originating in Prince Edward Island.

Survey results also note that the extent of the infestation in Prince Edward Island is more widespread than previously believed. PVY-N has been found in many more seed potatoes in Prince Edward Island, in areas within Prince Edward Island that were previously thought to be free from PVY-N, and in varieties other than Atlantic.

Some of the detections in Ontario relate to infections that occurred in Ontario in previous years. However, at least one PVY-N detection in tobacco in Ontario made last year, and one this year, have not been directly linked to the presence of infected potatoes. It appears that another unknown host of PVY-N may be present in Ontario and acting as a source of inoculum capable of causing recurring infections in tobacco and potatoes. To date, the surveys for PVY-N in Ontario have concentrated on a few farms that received Prince Edward Island potatoes that were considered high risk for PVY-N. The majority of seed potatoes in Ontario have yet to be tested for PVY-N. The presence of an unknown source of inoculum for PVY-N in Ontario leaves many questions about the possible risks associated with the movement of potatoes from Ontario.

The recent Canadian surveys have detected PVY-N only once in each of the provinces of New Brunswick, Nova Scotia, and Quebec. The infected potatoes have been authorized for local processing only. We perceive the risk of introducing PVY-N in potatoes from those provinces to be small relative to potatoes from Ontario and Prince Edward Island.

Therefore, we are broadening the prohibition on seed potatoes from Prince Edward Island to all varieties from all parts of Prince Edward Island. We are adding Ontario as a province from which seed potatoes are prohibited, regardless of variety, due to the circumstances noted above concerning the presence of PVY-N in tobacco, potatoes, and possibly other hosts in Ontario that have yet to be identified.

We are permitting the importation of seed potatoes from other provinces if a USDA import permit has been obtained and the potatoes are accompanied by a phytosanitary certificate stating the province of origin and containing the following statements as explained below:

- The potatoes are neither the progeny of nor were grown on the same Canadian seed potato farm with potatoes produced in Ontario or Prince Edward Island in 1988 or later, nor are the sibling potatoes of a lot of potatoes known to be infected with PVY-N. (Sibling potatoes are potatoes that were produced from the same common seed source in the previous growing season. They are potatoes that were harvested from the same field.) These restrictions are necessary to prevent the importation of seed potatoes which are at high risk of being infected with the PVY-N virus.
- The potatoes are not harvested from a farm or field that is within 200 meters of a farm or field where PVY-N has been detected. The natural spread of the aphids in the field that act as vectors for PVY-N is generally 100 meters or less per year. As a precautionary measure, we are requiring that these potatoes be no closer than 200 meters from PVY-N infected potatoes.

We consider the risks of introducing PVY-N into the United States with Canadian table stock and processing potatoes to be very low. There are no restrictions due to PVY-N on such potatoes from Canada, except Ontario, Prince Edward Island, New Brunswick, Nova Scotia, and Quebec. However, due to the circumstances in Ontario and Prince Edward Island described above, we believe additional safeguards and/or certifications are necessary for table stock and processing potatoes from these provinces to lessen any risks. We consider the disease risks to be less from New Brunswick, Nova Scotia, and Quebec, since PVY-N was detected only once in each of these provinces in recent surveys conducted by Agriculture Canada and since the infected potatoes have been destroyed.

Therefore, we are allowing the importation of table stock and processing potatoes from Ontario and Prince Edward Island if a USDA import permit has been obtained and the potatoes are accompanied by a phytosanitary certificate stating that the potatoes were not grown from seed potatoes that were siblings of a lot of potatoes known to be infected with PVY-N, were not harvested from a farm or field that is within 200 meters of any farm or field where PVY-N was detected, and were treated while dormant with chlorpropham in accordance with labeled rates approved and authorized by the U.S. Environmental Protection Agency.

The sprout inhibitor chlorpropham acts to extend the dormancy of potatoes when it is applied to dormant potatoes. Treating while dormant is recommended on the label of the sprout inhibitor. When potatoes are imported and are found to be sprouting, we assume that they were either not treated with sprout inhibitor or that the inhibitor was improperly applied.

We are requiring sprout inhibitor treatment for table stock from Ontario and Prince Edward Island to reduce the chances of these potatoes being planted and then producing PVY-N infected plants. Home gardeners frequently plant table stock potatoes instead of purchasing seed potatoes because the diversity of potato varieties available for sale as table stock in grocery stores generally outnumbers the varieties available as seed potatoes in local garden supply stores, nurseries, etc.

We also believe sprout inhibitor treatment is necessary for processing potatoes from Ontario and Prince Edward Island, and many other areas where PVY-N has been detected. In the United States, processing plants that receive these potatoes are often near potato farms. Potato wastes and culls that are capable of growing are often generated at these processing plants. The sprout inhibitor treatment will help lessen the possibilities of these wastes and culls growing into PVY-N infected plants which could spread to potatoes or other potential hosts growing nearby.

We believe that table stock and processing potatoes from Ontario and Prince Edward Island that meet the requirements described above present an insignificant level of risk of spreading PVY-N if imported because of the multiple safeguards imposed by the certification requirements and treatment.

We are allowing the importation of table stock and processing potatoes from Ontario and Prince Edward Island that have been treated with the sprout inhibitor chlorpropham, but which do not meet the other certification requirements described above, only from August 15 through March 15, inclusive.

Without the previously described certification, we feel that table stock and processing potatoes from Ontario and Prince Edward Island pose an increased degree of risk of spreading PVY-N. Our past experience with table stock and processing potatoes from Canada reveals that they begin breaking dormancy and sprouting near the end of March, depending on how the potatoes were stored. After dormancy breaks, sprout inhibitors are less effective. The possibility exists, albeit remote, that these potatoes could be planted and grown, especially by home gardeners, and produce PVY-N infected plants. Also, potato processing plants that receive these potatoes could generate culls and wastes that could potentially produce PVY-N infected plants. If infected plants were to develop from the culls or wastes, they could serve as a

source of infection for other potatoes growing within the vicinity of the processing plants. To reduce the possibilities of these events occurring, we are prohibiting the importation of these potatoes from March 16 through August 14, inclusive, unless they meet the certification requirements, as a precaution against the possible planting of these potatoes by home gardeners, or the growth of these plants from potato culls and wastes at processing plants, during a time of the year when most potato and tobacco crops are being grown in the United States.

From August 15 through March 15, inclusive, table stock and processing potatoes from Canada will likely be comprised of either recently harvested potatoes which are incapable of growing, or potatoes which are dormant. When treated with chloropropham, dormant potatoes are unlikely to produce potato plants even if planted. Also, by August 15, most potatoes in the United States have been harvested and tobacco is at or near harvest. Additionally, most home gardeners in the United States are not likely to be planting potatoes after this date.

We are allowing table stock and processing potatoes that were harvested in New Brunswick, Nova Scotia, and Quebec to be imported without sprout inhibitor treatment. Those potatoes will be allowed entry if a USDA import permit has been obtained and the potatoes are accompanied by a phytosanitary certificate stating that they were not the progeny of nor were grown on the same farm with potatoes produced in Ontario or Prince Edward Island in 1988 or later, were not grown from seed potatoes that were the siblings of a lot of potatoes known to be infected with PVY-N, and were not harvested from a farm or field that is within 200 meters of any farm or field where PVY-N was detected. These potatoes meet the basic certification requirements which we are establishing for seed potatoes from New Brunswick, Nova Scotia, and Quebec, which could be imported and planted. Therefore, sprout inhibitor treatment is unnecessary for table stock and processing potatoes if certified as described in this paragraph. Alternately, table stock and processing potatoes harvested in New Brunswick, Nova Scotia, and Quebec that do not meet the above requirements may be imported if a USDA import permit has been obtained and the potatoes are accompanied by a phytosanitary certificate stating that they were treated while dormant with the sprout inhibitor chlorpropham in accordance with labeled rates approved and authorized by the Environmental Protection Agency.

We are also changing the nursery stock regulations to prohibit the importation of potato plants (other than tubers and true seeds) from Nova Scotia, Ontario, and Quebec. It is necessary to prohibit the importation of potato plants from provinces where PVY-N has been detected because we have no way to trace potato plants and determine whether or not they are from infected sources or were grown in proximity to infected sources. In the previous interim rule we prohibited the importation of potato plants from New Brunswick and Prince Edward Island.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of the necrotic strain of potato virus Y (PVY-N) into the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including 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

The emergency nature of this action makes it impracticable for the Agency to follow the procedures of Executive Order 12291 and Secretary's Memorandum 1512-1 with respect to this interim rule. Immediate action is warranted to prevent the introduction of PVY-N into the United States.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Regulatory Impact Analysis, if required, will address the issues required in section 604 of Public Law 96-354, the Regulatory Flexibility Act.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this interim rule will be submitted for approval to the Office of Management and Budget. Written comments should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. A duplicate copy of comments should be submitted to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 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.)

List of Subjects

7 CFR Part 319

Agricultural commodities, Imports, Nursery stock, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

7 CFR Part 321

Agricultural commodities, Imports, Plant diseases, Plant pests, Plants (Agriculture), Potatoes, Quarantine, Transportation.

Accordingly, 7 CFR parts 319 and 321 are amended to read as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In the table in § 319.37-2, paragraph (a), the entry listed for "*Solanum* spp. (excluding potato tubers which are subject to 7 CFR part 321).", the information listed in the second column for this entry is revised to read as follows:

§ 319.37-2 Prohibited articles.

(a) * * *

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
* * *	* * *	* * *
Solanum spp. * * *.....	All except Canada (excluding New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec).	* * *
* * *	* * *	* * *

PART 321—RESTRICTED ENTRY ORDERS

3. The authority citation for part 321 continues to read as follows:

Authority: 7 U.S.C. 154, 159, and 162; 44 U.S.C. 35; 7 CFR 2.17, 2.51, and 371.2(c).

4. Section 321.2 is amended by adding the following definition in alphabetical order to read as follows:

§ 321.2 Definitions.

* * * * *

Sibling potatoes. Potatoes that were produced from the same common seed source or harvested from the same field in the previous growing season.

* * * * *

5. Section 321.9 is amended by removing paragraphs (g) and (h) and by revising paragraphs (b) through (f) to read as follows:

§ 321.9 Importation of potatoes from Canada.

* * * * *

(a) * * *

(b) Seed potatoes grown in Ontario and Prince Edward Island may not be imported.

(c) Seed potatoes imported from Canada that are not provided for in paragraphs (a) or (b) of this section must be accompanied by a phytosanitary certificate issued by Agriculture Canada stating the province of origin and bearing an additional declaration stating that the seed potatoes are neither the progency of nor were grown on the same Canadian seed potato farm with potatoes produced in Ontario or Prince Edward Island in 1988 or later, are not the sibling potatoes of a lot of potatoes known to be infected with PVY–N, and were not harvested from a farm or field that is within 200 meters of a farm or field where PVY–N has been detected.

(d) Table stock and processing potatoes that were harvested in Ontario or Prince Edward Island may be imported:

(1) Between August 15 and March 15 of each year if accompanied by a phytosanitary certificate stating that they have been treated while dormant with the sprout inhibitor chlorpropham in accordance with labeled rates approved and authorized by the U.S. Environmental Protection Agency; or

(2) Year round if accompanied by a phytosanitary certificate stating that the potatoes were not grown from seed potatoes that are sibling potatoes of a lot of potatoes known to be infected with PVY–N, were not harvested from a farm or field that is within 200 meters of any farm or field where PVY–N was detected, and were treated while dormant with chlorpropham in accordance with labeled rates approved and authorized by the U.S. Environmental Protection Agency.

(e) Table stock and processing potatoes that were harvested in New Brunswick, Nova Scotia, and Quebec may be imported with a phytosanitary certificate stating that:

(1) They were not the progeny of nor were grown on the same farm with potatoes produced in Ontario or Prince Edward Island in 1988 or later, were not grown from seed potatoes that were the siblings of a lot of potatoes known to be infected with PVY–N, and were not harvested from a farm or field that is within 200 meters of any farm or field where PVY–N was detected, or

(2) They were treated while dormant with the sprout inhibitor chlorpropham in accordance with labeled rates approved and authorized by the U.S. Environmental Protection Agency.

(f) Importers must obtain an import permit issued by the United States Department of Agriculture, in accordance with § 321.4, for potatoes for which phytosanitary certificates are required by paragraphs (c) through (e) of this section.

Done in Washington, DC, this 27th day of December 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–85 Filed 1–3–92; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV–91–431FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Minimum Size Requirements for Red and White Seedless Grapefruit and Dancy Tangerines

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting, with a correction, as a final rule an interim final rule which relaxed the minimum size requirement for red and white seedless grapefruit to 3 5/16 inches in diameter from 3 9/16 inches for the remainder of the 1991–92 shipping season. The interim final rule also indefinitely relaxed the minimum size requirement for domestic shipments of Dancy tangerines to 2 5/16 inches in diameter from the current 2 6/16 inch requirement. The relaxations were based on this season's crop and market demand conditions, and the maturity and flavor levels of these citrus fruits.

EFFECTIVE DATE: January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–9918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (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.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 10,200 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The Citrus Administrative Committee (committee), which administers the marketing order locally, met September 10, 1991, and unanimously recommended the relaxations specified in the interim final rule. The committee meets prior to and during each season to review the handling regulations effective on a continous basis for each citrus fruit regulated under the marketing order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

The interim final rule was issued on October 11, 1991, and published in the **Federal Register** (56 FR 51971, October 17, 1991), with an effective date of October 11, 1991, and a 30-day comment period ending November 18, 1991. No comments were received.

Section 905.306 of the regulations (7 CFR 905.306) in Table I of paragraph (a) specifies minimum grade and size requirements for grapefruit and tangerines grown in Florida and shipped to the 48 contiguous States and the District of Columbia of the United States (the domestic market).

The interim final rule relaxed the minimum size requirement to size 56 (3 5/16 inches in diameter) from size 48 (3 9/16 inches in diameter) for red seedless grapefruit through October 25, 1992, and for white seedless grapefruit through August 16, 1992. However, the interim rule as published in the October 17, 1991, **Federal Register** incorrectly stated that on or after 08/17/92, the minimum size requirement for white seedless grapefruit would be 3 5/16. The correct minimum size requirement is 3 9/16 and is reflected in this final rule. The Florida seedless grapefruit shipping season normally begins in September and continues until the following July.

In addition, the interim final rule relaxed the minimum size requirement for domestic shipments of Florida Dancy tangerines to size 210 (2 7/16 inches in diameter) from size 176 (2 6/16 inches) indefinitely. Dancy tangerine shipments each season normally begin about the first of November, peak in December, and end the following March.

The committee reported that the 1991–92 Florida citrus season was much earlier than normal this year and recommended these relaxations based on its assessment of maturity, flavor level, and size composition of this season's Florida seedless grapefruit and Dancy tangerine crops. This committee's action followed its practice of prior years of recommending reduced minimum size requirements for these fruits once they reach acceptable levels of flavor and maturity for the fresh market. The committee anticipates that the demand will be good for size 56 seedless grapefruit and size 210 Dancy tangerines this season, and that the fruit will meet consumer acceptance.

The relaxations were designed to enable Florida citrus shippers to ship sizes of fruit to the domestic market which are consistent with the demand in those markets during the 1991–92 season, and to maximize shipments to fresh market channels. The minimum size requirements are designed to provide fresh markets with fruit of acceptable size and maturity, thereby maintaining consumer confidence in fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is expected to increase returns to Florida citrus growers.

The minimum grade and size requirements in section 944.106 for grapefruit imported into the United States have been suspended since March 11, 1991. The U.S. Trade Representative (USTR) was notified that we contemplated reinstating those requirements upon USTR concurrence. Since the interim final and this final rule changes the size requirements for Florida grapefruit, the USTR will be notified that we are contemplating making similar changes in the grapefruit import requirements when they are reinstated.

Under the marketing order for Florida citrus, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This action reflects the committee's and the Department's appraisal of the need to maintain the relaxed size requirements currently in effect. The Department's view is that this action will have a beneficial impact on producers and handlers since it would allow Florida citrus handlers to continue to ship those sizes of fruit available to meet consumer needs consistent with this season's crop and market conditions.

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

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (56 FR 51971, October 17, 1991), will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains relaxed minimum size requirements currently in effect for Florida red and white seedless grapefruit and Dancy tangerines; (2) Florida grapefruit and tangerine handlers are aware of this action which was unanimously recommended by the committee at a public meeting and they will need no additional time to continue complying with the relaxed requirements; (3) shipment of the 1991–92 season Florida grapefruit and Dancy tangerine crops is currently in progress; (3) the interim

final rule provided a 30-day comment period and no comments were received; and (4) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the Federal Register (56 FR 51971, October 17, 1991), is adopted as a final rule with the following change:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

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

§ 905.306 [Amended]

2. Section 905.306 is amended in Table I of paragraph (a) by revising the number "3 5/16" to read "3 9/16" in column 4 for Grapefruit: seedless, except red, on and after 8/17/92.

Note: This section will appear in the annual Code of Federal Regulations.

Dated: December 27, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–28 Filed 1–3–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 907

[Navel Orange Regulation 727]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from January 3, 1992, through January 9, 1992. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. Regulation was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 727 (7 CFR part 907) is effective for the period from January 3, 1992, through January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (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.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 79 percent of the total production in 1990–91. District 2 is located in the southern coastal area of California and represented almost 18 percent of 1990–91 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 3 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's revised estimate of 1991–92 production is 64,600 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 32,895 cars during the 1990–91 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee has estimated that about 68 percent of the 1991–92 crop of 64,600 cars will be utilized in fresh domestic channels (43,650 cars), with the remainder being exported fresh (14 percent), processed (16 percent), or designated for other uses (2 percent). This compares with the 1990–91 total of 16,675 cars shipped to fresh domestic markets, about 51 percent of that year's crop. In comparison to other seasons, 1990–91 production was low because of a devastating freeze that occurred during December 1990.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize

certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers to connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1991–92 season on June 25, 1991. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 24, 1991, in Visalia, California; and District 2 and 3 on October 1, 1991, in Ontario, California. The Committee subsequently revised its marketing policy at a meeting on October 15, 1991. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Mr. Nissen. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on December 30, 1991, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with 7 members voting in favor, 2 opposing, and 1 abstaining, that 750,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1991–92 marketing policy. The recommended amount of 750,000 cartons compares to the 1,300,000 cartons specified in the Committee's shipping schedule. Of the 750,000 cartons, 94.82 percent or 711,150 cartons are allotted for District 1, and 5.18 percent or 38,850 cartons are allotted for District 3. Handlers in Districts 2 and 4 will not be regulated as they are not shipping a sufficient quantity of navel oranges to warrant volume regulation at this point in the season.

During the week ending on December 26, 1991, shipments of navel oranges to fresh domestic markets, including Canada, totaled 742,000 cartons compared with 1,064,000 cartons shipped during the week ending on December 27, 1990. Export shipments totaled 209,000 cartons compared with 119,000 cartons shipped during the week ending on December 27, 1990. Processing and other uses accounted for 244,000 cartons compared with 183,000 cartons shipped during the week ending on December 27, 1990.

Fresh domestic shipments to date this season total 8,901,000 cartons compared with 12,610,000 cartons shipped by this time last season. Export shipments total 1,158,000 cartons compared with 1,419,000 cartons shipped by this time last season. Processing and other use shipments total 1,813,000 cartons compared with 2,700,000 cartons shipped by this time last season.

For the week ending December 26, 1991, regulated shipments of navel oranges to the fresh domestic market were 719,000 cartons on an adjusted allotment of 978,000 cartons which resulted in net undershipments of 259,000 cartons. Regulated shipments for the current week (December 27, 1991 through January 2, 1992) are estimated at 860,000 cartons on an adjusted allotment of 1,019,000 cartons. Thus, undershipments of 159,000 cartons could be carried forward into the week ending on January 9, 1992.

The average f.o.b. shipping point price for the week ending on December 26, 1991, was $10.06 per carton based on a reported sales volume of 767,000 cartons. The season average f.o.b. shipping point price to date is $10.38 per carton. The average f.o.b. shipping point prices for the week ending on December 27, 1990, was $10.40 per carton; the season average f.o.b. shipping point price at this time last year was $9.23.

The Department's Market News Service reported that, as of December 31, demand is light, and the market is about steady.

Committee members discussed implementing volume regulation at this time, as well as different levels of allotment. It was reported that poor weather conditions have hampered harvesting in northern California. Several Committee members commented that they expect a large carryover from the past week. Most Committee members believe net undershipments will exceed 100 cars. Two Committee members favored open movement at this time, while the majority of Committee members favored the issuance of general maturity allotment.

According to the National Agricultural Statistics Service, the 1990–91 season average fresh equivalent on-tree price for California-Arizona navel oranges was $7.75 per carton, 119 percent of the season average parity equivalent price of $6.52 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1991–92 season average fresh on-tree price is estimated at $6.33 per carton, about 85 percent of the estimated fresh on-tree parity equivalent price of $7.44 per carton.

Limiting the quantity of navel oranges that may be shipped during the period from January 3, 1992, through January 9, 1992, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1991–92 season was published in the September 30, 1991, issue of the **Federal Register** (56 FR 49432). The Department is currently in the process of analyzing comments received in response to this proposal and, if warranted, may finalize that action this season. However, issuance of this final rule implementing volume regulation for the regulatory week ending on January 9, 1992, does not constitute a final decision on that proposal.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this

action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 31, 1991, and this action needs to be effective for the regulatory week which begins on January 3, 1992. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

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

2. Section 907.1027 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1027 Navel Orange Regulation 727.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from January 3, 1992, through January 9, 1992, is established as follows:

(a) District 1: 711,150 cartons;

(b) District 2: unlimited cartons;

(c) District 3: 38,850 cartons;

(d) District 4: unlimited cartons.

Dated: December 31, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–261 Filed 1–3–92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-64, Special Conditions No. 25-ANM-53]

Special Conditions: Modified McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These final special conditions are issued for the McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series airplanes modified by E-Systems, Inc. for design of Civil Reserve Air Fleet Aeromedical Evacuation Ship Set kits. Removal of existing passenger seats and installation of the kits will result in these airplanes being equipped with an aeromedical evacuation interior that can accommodate up to 45 litter patients and their attendants. The aeromedical evacuation ship set kit includes an additional oxygen system, utilizing liquid oxygen for storage, that provides medical oxygen for the litter patients. The applicable regulations do not contain adequate or appropriate safety standards for the design and installation of medical oxygen systems utilizing liquid oxygen for storage. These special conditions contain the additional safety standards which the Administrator considers necessary to ensure that the design and installation of the medical oxygen system utilizing liquid oxygen for storage is such that a level of safety equivalent to that established by the airworthiness standards of Part 25 of the Federal Aviation Regulations (FAR) is provided.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: William Schroeder, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1989, E-Systems, Inc. applied for a supplemental type certificate (STC) to modify McDonnell Douglas DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series airplanes by removing the existing seats and installing a conversion kit that provides an interior for transportation of sick or wounded persons. The conversion kits are being developed to meet the needs of the United States Military Airlift Command Civil Reserve Air Fleet program involving quick conversion of U.S. civil air carrier passenger airplanes for transportation of sick and wounded personnel. The conversion kit includes a patient transport interior system (provisions for up to 45 litters), aeromedical operations system (60 cycle AC electric power supply and distribution system and one nurse station including seat and desk), and a medical oxygen system (liquid oxygen dewars/converters, valves, evaporating coils, lines, regulators, indicators, fittings, etc.) utilizing liquid oxygen for storage. Approval of the performance of the medical oxygen system (flow rate, percent oxygen delivered, delivery temperature, etc.) is not included as part of the STC approval except that the system peformance shall not result in any unsafe condition as related to the airplane. The proposed modification incorporates a novel or unusual design feature, in the form of a medical oxygen system, utilizing liquid oxygen for storage, that provides oxygen for up to 45 litter patients. Existing applicable regulation in the McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series certification basis do not provide adequate or appropriate safety standards for the design and installation of medical oxygen systems that utilize liquid oxygen for storage.

Supplemental Type Certification Basis

Under the provisions of § 21.115, Subchapter C, of the FAR, E-Systems, Inc. must show that the modified DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) airplanes meet the regulations incorporated by reference in Type Certificate No. A6WE, as specified in § 21.101(a), unless: (1) Otherwise specified by the Administrator; (2) compliance with later effective amendments is elected or required under §§ 21.101 (a) or (b); or (3) special conditions are prescribed by the Administrator.

Under the provisions of §§ 21.101 (a) and (b), E-Systems, Inc. must show that the Models DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) as changed, continue to meet the applicable provisions of the regulations incorporated by reference in the Type Certificate No. A6WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." In addition, the

certification basis includes certain special conditions, exemptions and optional requirements that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (Part 25 requirements) do not contain adequate or appropriate safety standards for the Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by § 11.28 and § 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

There are no specific regulations that address the design and installation of medical oxygen systems that utilize liquid oxygen for storage. Existing requirements such as §§ 25.1309, 25.1441 (b) and (c), 25.1451, and 25.1453 in the McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series certification basis applicable to this STC project provide some design standards appropriate for medical oxygen system installations. However, additional design standards for medical oxygen systems utilizing liquid oxygen are needed to supplement the existing applicable requirements. The quantity of medical liquid oxygen involved in this installation and the potential for unsafe conditions that may result when the oxygen content of an enclosed area becomes too high because of system leaks, malfunction, or damage from external sources, make it necessary to assure adequate safety standards are applied to the design and installation of the system in McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series airplanes.

To ensure that a level of safety is achieved for McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series airplanes, utilizing liquid oxygen as a storage medium for a medical oxygen system, equivalent to that intended by the regulations incorporated by reference, special conditions are needed which require those oxygen systems to be designed and installed to preclude or minimize the existence of unsafe conditions that can result from system leaks, malfunction, installation, or damage from external sources.

Application by E-Systems for approval of medical oxygen systems utilizing liquid oxygen as a storage medium installed in transport airplanes and the unsafe conditions that can exist when the oxygen content of an enclosed area becomes too high because of system leaks, malfunction, installation or damage from external sources make development and application of appropriate additional design and installation standards necessary.

Under standard practice, the effective date of these final special conditions would be 30 days after the date of publication in the **Federal Register**. As the intended STC date for the first DC-9-81, DC-9-82 and DC-9-83 series is imminent, the FAA finds good cause exists to make these special conditions effective upon issuance.

Discussion of Comments

Notice of Proposed Special Conditions No. SC-91-11-NM was published in the **Federal Register** on November 6, 1991 (56 FR 56605). The comment period closed November 25, 1991. One comment was received, from an organization representing airline pilots, expressing concern about having liquid oxygen on aircraft piloted by their members. In their understanding, commercial air carriers do not use liquid oxygen, and hence, have not established procedures and trained personnel to handle it. They stated that if the FAA approves these special conditions it is incumbent that it also ensure that adequate maintenance and operations procedures are developed and followed.

The FAA agrees with the commenter. The procedures for using therapeutic oxygen from a system that utilizes liquid oxygen for storage are the same as those for users of therapeutic oxygen from a system that utilizes high pressure oxygen for storage. The personnel administering or receiving the oxygen will be unable to detect a difference. Oxygen systems that utilize liquid oxygen for storage require special operations and maintenance procedures to assure safety. The special operations and maintenance instructions for this system will be contained in documents which are included as part of the Supplemental Type certificate (STC) approved modification kit. These documents will be included with each kit installation along with the Flight Manual Supplement to assure appropriate operations and maintenance procedures are provided to operators.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

These special conditions provide necessary additional safety standards for design and installation of medical oxygen systems utilizing liquid oxygen as a storage medium in McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series airplanes called into service under the U.S. Military Airlift Command Civil Reserve Air Fleet program for the purpose of transporting sick and wounded military personnel within the continental United States. The recent certification of an identical but larger capacity medical oxygen system utilizing liquid oxygen provides the military an intercontinental capability to transport sick and wounded military personnel. The utilization of McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series airplanes will enhance and expedite the military capability to transport the sick and wounded military personnel to medical facilities best equipped to handle the particular illness or injury.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

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

The Final Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Civil Reserve Air Fleet Aeromedical Evacuation Ship Set kits for modification of McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series airplanes.

The medical oxygen system utilizing liquid oxygen for storage must be designed and installed to ensure that no failure of the system, including a leak in any part of the medical oxygen system, would prevent continued safe flight and landing of the aircraft. In addition, the following design criteria apply with respect to these special conditions.

a. The liquid oxygen converter and other oxygen equipment shall not be installed in compartments where baggage, cargo or loose equipment is stored.

b. The liquid oxygen converter shall be located in the aircraft so as to

minimize damage to the liquid oxygen converter due to an uncontained rotor or fan blade failure.

c. The pressure relief valves on the liquid oxygen converters shall be vented overboard through a drain at the bottom of the aircraft. There shall be no hydrocarbon filling or drain provisions forward, above or in proximity to the vent outlet.

d. The system installation shall include provisions to assure complete conversion of the liquid oxygen to gaseous oxygen.

e. Check valves shall be installed in systems where multiple converters are manifolded together so a leak in one converter will not allow leakage of oxygen from any other converter.

f. Oxygen lines shall consist of rigid tubing or flexible hoses. The rigid tubing shall be of aluminum alloy conforming to AMS 4071 or corrosion resistant annealed steel type 304. Flexible hoses shall be qualified for oxygen service and, where applicable, cryogenic service.

g. Flexible hoses shall be used for the aircraft system connections to shock mounted converters where movement relative to the aircraft will occur.

h. Condensation from system components or lines shall be collected by drip pans, shields or other suitable collection means and drained overboard through a drain fitting separate from the liquid oxygen vent fitting.

i. Oxygen components and systems shall meet the requirements of § 25.1438(b) and be installed in accordance with the recommended practices of FAA Advisory Circular 43.13-1A, chapter 8, section 3, paragraph 363; chapter 10, section 1, paragraph 393, and Advisory Circular 43.13-2A, chapter 6, paragraph 86 through paragraph 89. The oxygen system components shall be electrically bonded to aircraft structure.

j. A means shall be provided to indicate system pressure and the quantity of liquid oxygen in the converters.

Issued in Renton, Washington on December 26, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 92-174 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-AWP-21]

Name Change to Compulsory Reporting Points; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the names of the Salt River, AZ, compulsory reporting points to Phoenix, AZ. A final rule was published in the **Federal Register** on November 15, 1991, (56 FR 57973), Airspace Docket No 91-AWP-3, that altered the descriptions of VOR Federal airways and jet routes extending from the Salt River VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) located in Phoenix, AZ. These alterations were due to the relocation of the Salt River VORTAC and subsequent name change to the Phoenix VORTAC. The name changes to the compulsory reporting points were inadvertently omitted from the final rule.

EFFECTIVE DATE: 0901 u.t.c., January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SE., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On June 4, 1991, the FAA proposed to amend parts 71 and 75 of the Federal Aviation Regulations (14 CFR parts 71 and 75) to alter the descriptions of VOR Federal airways and jet routes located in Phoenix, AZ (56 FR 25382). A final rule was published in the **Federal Register** on November 15, 1991, (56 FR 57973), Airspace Docket No. 91-AWP-3, with an effective date of January 9, 1992, that altered the descriptions of VOR Federal airways and jet routes extending from the Salt River VORTAC located in Phoenix, AZ. These alterations were due to the relocation of the Salt River VORTAC, 4 miles west of its previous position, and subsequent name change to the Phoenix VORTAC. The name changes to the compulsory reporting points were inadvertently omitted from the final rule. Section 71.203 and 71.207 of part 71 of the Federal Aviation Regulations were republished in FAA Handbook 7400.7 dated November 1, 1991.

The Rule

This emendment to part 71 of the Federal Aviation Regulations changes the names of the Salt River, AZ, compulsory reporting points to Phoenix, AZ. These changes are necessary to coincide with the relocation and subsequent name change of the Salt River, AZ, VORTAC to the Phoenix, AZ, VORTAC. Accordingly, since this action merely involves a change in the names of the Salt River, AZ, compulsory reporting points, and does not involve a change in the actual dimensions, configuration, or operating requirements of airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Furthermore, because there is an immediate need to change the names of the compulsory reporting points to incorporate the name change onto the next chart and avoid pilot confusion, I find that good cause exists, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Compulsory reporting points.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

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

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

§ 71.203 [Amended]

2. Section 71.203 is amended as follows:

Salt River, AZ [Remove]
Phoenix, AZ [New]

§ 71.207 [Amended]

3. Section 71.207 is amended as follows:

Salt River, AZ [Remove]
Phoenix, AZ [New]

Issued in Washington, DC, on December 30, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-175 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 91-AWP-3]

Alteration of VOR Federal Airways and Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the descriptions of Jet Routes J-244 and J-19 located in Phoenix, AZ. The final rule was published in the **Federal Register** on November 15, 1991, (56 FR 57973), Airspace Docket No. 91-AWP-3. During the flight check of J-244 and J-19, the Phoenix 052° radial was changed to the Phoenix 053° radial. The change was not reflected in the final rule. This action changes the radial description.

EFFECTIVE DATE: January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 91-27475, Airspace Docket No. 91-AWP-3, published on November 15, 1991, (56 FR 57973), altered the descriptions of VOR Federal airways and jet routes extending from the Salt River VORTAC (SRP) located in Phoenix, AZ. These alterations were due to the reolocation of the Salt River VORTAC and subsequent name change to the Phoenix VORTAC. During the flight check of J-244 and J-19, the Phoenix 052' radial was changed to the Phoenix 053' radial. This change was not reflected in the final rule. This action changes the Phoenix 052' radial to the Phoenix 053' radial.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the descriptions of J-244 and J-19 located in Phoenix, AZ, as published in the **Federal Register** on November 15, 1991, (56 FR 57973), (Federal Register Document 91-27475, page 57973, column 3 and page 57974, column 1), are corrected as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9665, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 75.100 [Corrected]

2. § 75.100 is corrected to read as follows:

J-244 [Corrected]

By removing the words, "INT Zuni 242° and Phoenix, AZ, 052° radials; Phoenix;" and substituting the words, "INT Zuni 242° and Phoenix, AZ, 053° radials; Phoenix;"

J-19 [Corrected]

By removing the words, "From Phoenix, AZ, via INT Phoenix 052° and Zuni, NM, 242° radials;" and substituting the words, "From Phoenix, AZ, via INT Phoenix 053° and Zuni, NM, 242° radials;"

Issued in Washington, DC, on December 30, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-173 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 1543]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended; Business and Media Visas

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends part 41, Code of Federal Regulations, to implement the provisions of section 209 of the Immigration Act of 1990, Public Law 101-649. This section creates a new nonimmigrant classification under section 101(a)(15)(R) of the Immigration and Nationality Act, as amended, resulting in the addition of § 41.58 to 22 CFR part 41. The new nonimmigrant visa classification provides for the temporary admission into the United States of "aliens in religious occupations."

DATES: Effective January 6, 1992. Written comments must be received in duplicate by February 5, 1992.

ADDRESSES: Interested persons are invited to submit comments in duplicate to: Chief, Division of Legislation and Regulations, Visa Services, Department of State, Washington, DC 20522-0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, 202-663-1204.

SUPPLEMENTARY INFORMATION:

Public Law 101-649 Background

Until the enactment of Public Law 101-649, Congress had not provided a specific nonimmigrant classification for religious workers. Currently, aliens seeking to engage in religious activities in the United States temporarily must qualify under the B-1, H-1B, H-3, L-1, or J-1 nonimmigrant visa classifications. Aliens seeking to immigrate to the United States have been able to seek qualification under INA 101(a)(27)(C), or under INA 203(a) (3) or (6) in Schedule A Group III.

Discussion of INA 101(a)(15)(R), as Added by Section 209 of Public Law 101-649, and its Relation to INA 101(a)(27)(C), as Amended by Section 151 of Public Law 101-649

Provisions of INA 101(a)(15)(R) Relative to INA 101(a)(27)(C)

The Immigration Act of 1990 has amended INA 101(a)(27)(C), ministers of religion, and created a direct link between the new "INA 101(a)(15)(R)" classification and the special immigrant category. In order to qualify for an "R" visa, the alien must have been a member of a religious denomination having a bona fide nonprofit religious organization with branches in the United States for the two years immediately preceding application for admission and must be coming to the United States to engage in one of the three activities listed in INA 101(a)(27)(C)(ii), as amended by section 151 of Public Law 101-649. The alien must be coming either: (i) To carry on the vocation of minister of that religion (subparagraph (C)(ii)(I)); or (ii) to work for that organization at their request in a

religious vocation or occupation in a professional capacity (subparagraph (C)(ii)(II)); or (iii) to work for such qualifying organization in a religious vocation or occupation (subparagraph (C)(ii)(III)). A significant substantive difference between the nonimmigrant classification and the immigrant category lies in the fact that the immigrant alien must have not only been a member of the qualifying religious organization for the immediately preceding two years but must have also been carrying on one of the vocations and activities for those two years. A significant procedural difference between the nonimmigrant visa classification and the special immigrant category lies in the fact that a petition must be filed with and approved by the Immigration and Naturalization Service to accord special immigrant status. Although no petition is required to establish entitlement under "R" visa classification, the applicable standards common to the two visas, described below, must be applied by the Immigration and Naturalization Service and the Department of State.

Conference Report 101-955

The provisions of INA 101(a)(27)(C)(ii)(II) and (ii)(III) as they relate to the special immigrant visa category will sunset by October 1, 1994. The conference report 101-955 indicates that Congress may have intended these provisions to terminate for the nonimmigrant provisions as well. The language of the "R" visa classification, however, is unambiguous in stating that the alien must "perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii)." The Department and the INS read this literally and intend to apply these provisions until amended by law.

Criteria To Be Met

The special immigrant visa category under INA 101(a)(27)(C) and the nonimmigrant visa classification under INA 101(a)(15)(R), are the same with the exceptions noted above, and the same standards must be applied in adjudicating an alien's qualifications for such. The Department has sought to coordinate with the Immigration and Naturalization Service to use the same standards for the "R" visa classifications as INS applies through the petition process for extension of stay for "R" visa bearers and through the petition process for the special immigrant category where pertinent.

The first of the activities described in subparagraph (C)(ii)(I) concerns carrying on the vocation of a minister of religion. The Department has experience adjudicating special immigrant minister of religion cases and its standards have been adopted by the Immigration and Naturalization Service and are applicable to the "R" visa classification. (See Foreign Affairs Manual, Volume 9, Visas, § 42.24, Regulations and corresponding Notes.)

The alien will have to establish that the organization is a bona fide religious denomination by submitting evidence which reveals that the denomination possesses: (1) Some form of ecclesiastical government; (2) a recognized creed and form of worship; (3) a formal code of doctrine and discipline; (4) religious services; (5) established places of religious worship; and (6) religious congregations. The presentation of an IRS certificate of tax exempt status as a religion will constitute prima facie evidence that the religion is indeed a recognized religion.

The alien will also have to establish to the satisfaction of the consular officer that he or she possesses the authority of the denomination to conduct religious worship and to perform other duties usually performed by other clergy in that religion. Whereas the submission to the consular officer of a certificate of ordination might be sufficient evidence in traditional religions to verify that the applicant is indeed a minister, the applicant would in a nontraditional religion have to provide comprehensive information on that religion identifying the ministerial functions and provide evidence that this denomination has sanctioned the alien to perform such functions.

Defining Religious Vocation or Occupation

Both subparagraphs (II) and (III) of section 101(a)(27)(C)(ii) involve engaging in a religious vocation or occupation. Under (ii)(II) the alien must be working in a professional capacity and in (ii)(III) the applicant is not so restricted but must merely be working in a religious vocation or occupation. Although there is no perceived need for the distinction, as anyone who qualifies under (ii)(II) will clearly qualify under (ii)(III), both INS and the Department define professional capacity in their respective proposed regulations. In view of the statutory definition of profession at INA 101(a)(32) and the many administrative decisions seeking to define that term, it was decided that the appropriate standard would be an activity which requires a United States baccalaureate degree or its foreign equivalent for entry into that particular field of endeavor.

It was much more problematic defining a religious vocation or occupation, as House Report 101-723 provided guidance in the form of examples rather than by providing general standards. The examples cited aliens engaging in a religious vocation or occupation as those "who take vows, such as nuns and monks, and others who are liturgical workers, religious instructors, counselors, cantors and catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators or broadcasters." The report continued by saying that "these provisions relate to traditional religious functions and are not intended to cover janitors, maintenance workers and clerks." The House report appears to make a distinction between two classes of aliens, those who have taken vows or the equivalent, and those who have not taken such vows. In the Department's view this distinction can only bear any meaningful significance by restricting only lay-persons from engaging in janitorial, maintenance, clerical, or equivalent services. An alien who has taken vows or the equivalent and has made a lifetime commitment to a religion is presumed to be engaging in activities relating to a traditional religious function regardless of the nature of the activity, including janitorial services.

Affiliated Organization

Each applicant must establish that he or she is a member of a religious denomination that has a bona fide nonprofit religious organization in the United States. Again, the same standards used by the Department in adjudicating special immigrant cases will be applied to this nonimmigrant visa classification. (See Foreign Affairs Manual Volume 9, Visas, § 42.24 generally.) The Immigration Act of 1990 has introduced a new concept of an organization which is affiliated with the religious denomination. Such organization must be associated with the religious denomination in a subordinate or dependent position, as well as enjoying tax exemption under section 501(c)(3) of the Internal Revenue Code of 1986.

Limitation of Section 209 of Public Law 101-649

This section limits the total period of admission in "R" status to five years. If an alien has remained in the United States for the full five years in that status, the alien must reside and be physically present outside the United States for one year, except for brief visits to the United States for business or pleasure, before the alien can be readmitted in "R" status.

Interim Rule With Comments

This interim rule provides the general requirements of this nonimmigrant classification in paragraph § 41.58(a); defines terms for this classification in paragraphs (b) through (g); and prohibits, in paragraph (h), the issuance of an "R" vise to an alien who has spent five years in the United States in the "R" classification unless the alien has been resident and physically present outside the United States for the immediate preceding year.

This rule is not considered to be a major rule for purposes of Executive Order 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This interim rule imposes no reporting or recordkeeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements.

List of Subjects in 22 CFR Part 41

Aliens in religious occupations, Nonimmigrants, Passports and visas, Religious organizations.

In view of the legislative mandate of Public Law 101-649, part 41 to title 22 is amended by adding new § 41.58.

PART 41—[AMENDED]

1. The authority citation for part 41 is revised to read:

Authority: 8 U.S.C. 1104; sec. 209, 104 Stat. 5027; 8 U.S.C. 1101(a)(15).

2. Part 41, subpart F—Business and News Media, is amended by adding § 41.58 to read as follows:

§ 41.58 Aliens in religious occupations.

(a) *Requirements for "R" classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(R) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) The alien, for the 2 years immediately preceding the time of application for admission, has been a member of religious denomination having a bona fide nonprofit, religious organization in the United States; and

(3) The alien seeks to enter the United States solely for the purpose of

(i) Carrying on the vocation of a minister of that religious denomination, or

(ii) At the request of the organization, working in a professional capacity in a religious vocation or occupation for that organization, or

(iii) At the request of the organization, working in a religious vocation or occupation for the organization, or for a bona fide organization which is affiliated with the religious denomination described in section 501(c)(3) of the Internal Revenue Code of 1986; and

(4) The alien is seeking to enter the United States for a period not to exceed 5 years to perform the activities described in paragraph (3) of this section; or

(5) The alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Religious denomination.* A religious denomination is a religious group or community of believers. Among the factors that may be considered in determining whether a group constitutes a bona fide religious denomination are the presence of some form of ecclesiastical government, a recognized creed and form of worship, a formal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, and religious congregations. For purposes of this definition, an interdenominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

(c) *Bona fide nonprofit religious organization in the United States.* For purposes of this section, a bona fide nonprofit religious organization is an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the consular officer that it would be eligible therefore if it had applied for tax exempt status.

(d) *Bona fide organization which is affiliated with the religious denomination.* A bona fide organization affiliated with the religious denomination is an organization which is both closely associated with the religious denomination and exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, as it relates to religious organizations.

(e) *Minister of religion.* A minister is an individual who is duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. A minister does not include a lay preacher who is not authorized to perform such duties. In all cases, there must be a reasonable connection between the activities performed and the religious calling of a minister.

(f) *Professional Capacity.* Working in a professional capacity means engaging in an activity in a religious vocation or occupation which is defined by INA 101(a)(32) or for which the minimum of a United States baccalaureate degree (or a foreign equivalent degree) is required for entry into that field of endeavor.

(g) *Religious Occupation.* A religious occupation is the habitual employment or engagement in an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

(h) *Religious Vocation.* A religious vocation is a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to nuns, monks, and religious brothers and sisters.

(i) *Alien not entitled to classification under INA 101(a)(15)(R).* An alien who has spent 5 years in the United States under INA 101(a)(15)(R) is not entitled to classification and visa insurance under that section unless the alien has resided and been physically present outside the United States, except for brief visits to the United States for business or pleasure, for the immediate prior year.

Dated: October 3, 1991.

Elizabeth M. Tamposi,

Assistant Secretary for Consular Affairs.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8388]

RIN 1545-AO29

Acquisitions Made to Evade or Avoid Income Tax; Use of Corporate Tax Attributes Following an Ownership Change

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final income tax regulations providing guidance relating to acquisitions made to evade or avoid income tax under section 269 of the Internal Revenue Code of 1986 (the "Code"). This document also contains final income tax regulations which provide guidance relating to the use of certain corporate tax attributes following an ownership change within the meaning of section 382(g)(1) to which section 382(l)(5) applies. Section 382 was amended in relevant part by the Tax Reform Act of 1986 (the "1986 Act") and the Revenue Act of 1987 (the "1987 Act").

DATES: *Effective date:* These regulations are effective January 6, 1992.

Applicability dates: These regulations apply generally to any ownership change, as defined under section 382 of the Code, occurring after December 31, 1986. The presumption under § 1.269-3(d) applies only to acquisitions of control or property effected pursuant to a plan of reorganization confirmed by a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) after August 14, 1990.

FOR FURTHER INFORMATION CONTACT: Victor L. Penico of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention CC:CORP:T:R) or telephone 202-566-3618 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A Notice of Proposed Rulemaking under sections 269, 382, and 383 of the Internal Revenue Code of 1986, relating to acquisitions made to evade or avoid income tax and to the use of pre-change corporate tax attributes following an ownership change with respect to which section 382(l)(5) applies, was published in the **Federal Register** on August 14, 1990 (55 FR 33137). Those regulations proposed to amend §§ 1.269-3(a) and 1.269-6 of the Income Tax Regulations and to add new §§ 1.269-3(d), 1.269-3(e), 1.269-7, and 1.382-3.

After issuance of the proposed regulations, the Internal Revenue Service received public comments on the proposed regulations and held a public hearing on December 3, 1990. After considering the comments and the statements made at the hearing, the Service adopts the proposed regulations as revised by this Treasury decision.

Ownership Changes to Which Section 382(l)(5) Applies

Section 1.269-7 of the proposed regulations clarifies that section 269 of the Code may be applied to disallow a deduction, credit or other allowance even though the acquisition of control or property of a corporation occurs in connection with an ownership change to which section 382 applies. Section 1.269-3(d) of the proposed regulations provides that, absent strong evidence to the contrary, a requisite acquisition of control or property in connection with an ownership change to which section 382(l)(5) applies is considered to be made for the principal purpose of tax evasion or avoidance unless the corporation carries on more than an insignificant amount of an active trade or business during and subsequent to the title 11 or similar case.

Several commentators objected to the presumption provided in § 1.269-3(d) of the proposed regulations. These commentators asserted that the presumption should either be eliminated or replaced with a non-exclusive list of factors indicating that an acquisition should or should not be considered to be made principally for tax evasion or avoidance. Commentators also asserted that, although § 1.382-3(c) of the proposed regulations provides that the continuity of business enterprise test required by section 382(c) of the Code is inapplicable to section 382(l)(5) ownership changes, the presumption in § 1.269-3(d) indirectly applies the test to such ownership changes.

As a result of these comments, the Service has made certain changes to clarify that the determination of whether a corporation carries on more than an insignificant amount of an active trade or business is made without regard to continuity of business enterprise under § 1.368-1(d) and that a corporation may satisfy this requirement even if all of the corporation's business activities temporarily cease for a period of time in order to address business exigencies.

Several commentators argued that section 269 of the Code should play only a residual role, applying only to transactions to which the rules of sections 382 and 383 technically do not apply, but which violate the purposes of those sections. These commentators believe that the acquisition of control of a bankrupt corporation by its qualified creditors in a section 382(l)(5) ownership change does not violate the purposes of section 382 regardless of the corporation's level of business activity because the creditors have borne the economic losses reflected in the tax attributes.

Relegating section 269 of the Code to a residual role is inconsistent with the intent of Congress, expressed in the Conference Report to the Tax Reform Act of 1986, that the amendment of sections 382 and 383 not alter the continuing application of section 269. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-194 (1986), 1986-3 (Vol. 4) C.B. 194. The rules of section 269 and other provisions of the Code that prohibit or limit deductions, credits, or other allowances are not mutually exclusive. See § 1.269-2(b). The application of section 269 to loss corporations that do not carry on more than an insignificant amount of a trade or business is consistent with interpretations of existing law that prevent taxpayers from trafficking in tax attributes of corporations carrying on minimal business activities. See *American Pipe and Steel Corporation* v. *Commissioner*, 243 F.2d 125 (9th Cir. 1957) and *U.S. Shelter Corporation* v. *United States*, 13 Cl. Ct. 606 (1987). Creditors are allowed deductions under other provisions of the Code for losses they incur as a result of bad debts.

Some commentators suggested that the presumption in § 1.269-3(d) ignores the requirement in section 269 of the Code that the acquiring persons or the corporation secure the benefit of a deduction, credit or other allowance which they would not otherwise enjoy. These commentators argue that section 269 does not apply to the acquisition of stock of a corporation unless there is a transfer of assets or other income-producing activity in order to use an otherwise unusable deduction, credit or other allowance. Section 269 has not been construed so narrowly. See *Inductotherm Industries, Inc.* v. *Commissioner*, T.C. Memo 1984-281 (taxpayer must demonstrate that the choice of a stock acquisition in preference to an asset acquisition was primarily motivated by genuine, nontax related, business reasons), aff'd without published opinion, 770 F.2d 1071 (3rd Cir. 1985); *Urban Redevelopment Corporation* v. *Commissioner*, 294 F.2d 328 (4th Cir. 1961) (purchaser's testimony inherently unbelievable because purchaser could have acquired assets rather than stock).

One commentator requested that, when a corporation is a member of a consolidated group, the determination of whether the corporation carries on more than an insignificant amount of a trade or business be made by taking into account the business activities of other members of the consolidated group. The Service recognizes that taking into account business activities of other

members of the consolidated group may be appropriate, but is deferring consideration of the issue until development of specific rules concerning reorganizations of consolidated groups under section 382(l)(5).

Some commentators asserted that the presumption in § 1.269-3(d) unfairly penalized taxpayers who effected transactions in reliance upon prior law. These commentators believe that the presumption should not be applied retroactively. Because the presumption imposes an additional evidentiary burden by giving further weight to the presumption of correctness already arising from a determination by the Commissioner under section 269, the final regulations make the presumption effective only for acquisitions of control or property effected pursuant to a plan of reorganization confirmed by a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) after August 14, 1990, the date the proposed regulations were published in the **Federal Register**. The general rules of section 269 continue to apply, however, to acquisitions of control or property occurring prior to such date.

Time of Acquisition of Control

Section 1.269-5 of the proposed regulations provides that creditors acquire control of an insolvent or bankrupt corporation only when they acquire beneficial ownership of the requisite amount of stock. Under the proposed regulations, the creditors are treated as acquiring beneficial ownership of the stock no earlier than the time a bankruptcy court confirms a plan of reorganization.

Some commentators argued that § 1.269-5, in conjunction with the presumption in § 1.269-3(d), inappropriately disregards the creditor's intent at the time the debt was incurred and that such intent should be a mitigating factor in the determination of whether the acquisition of control is made for the principal purpose of tax evasion or avoidance. Concern was also expressed that, in some cases, § 1.269-5 may create an inference that creditors acquire ownership of stock of the corporation before the effective date of the plan of reorganization for purposes of other Code sections.

The final regulations clarify that § 1.269-5 is applicable solely for purposes of section 269 of the Code. The Service believes that the intention of creditors when they lend money to a corporation (or otherwise become creditors) is not relevant to the principal purpose for a bankruptcy reorganization. The claims of creditors initially were taken in a form distinct from equity interests in important ways for legal and tax purposes (*e.g.*, interest paid on the claims was deductible by the debtor). Subsequently, the financial condition of the debtor deteriorated, and the creditors' claims became, as a practical matter, subject to greater risks of not being fully repaid. In a title 11 or similar case, the creditors may vote to receive the value of their claims in cash or property (other than stock of the debtor) or in stock of the debtor. This decision is independent of the earlier transaction in which the creditors chose to be (or otherwise became) creditors of the corporation.

Relationship of Section 269 to 11 U.S.C. 1129(d)

Section 1.269-3(e) of the proposed regulations provides that the fact that a governmental unit did not seek a determination under 11 U.S.C. 1129(d) is not taken into account in determining under section 269 of the Code whether an acquisition was made for the principal purpose of evasion or avoidance of Federal income tax and any determination by a court under 11 U.S.C. 1129(d) that the principal purpose of the plan is not avoidance of taxes is not controlling.

Although commentators criticized § 1.269-3(e) as incorrect and inappropriate for an income tax regulation, the final regulations adopt the rule of § 1.269-3(d) without substantive change. As stated in the Restatement of Judgments 2d section 28(4) (1982), issue preclusion does not apply where the burden of proof is changed in the subsequent proceeding. Moreover, it is appropriate as a matter of policy that determinations under 11 U.S.C. 1129(d) not preclude subsequent litigation of the issue in a tax proceeding because preclusion would deter the government from seeking determinations under 11 U.S.C. 1129(d). Finally, the interaction of a provision of the Code and another Federal statute is an appropriate issue for income tax regulations to address.

Special Analyses

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

Drafting Information

The principal author of these regulations is Victor L. Penico, Office of the Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, in matters of both substance and style.

List of Subjects

26 CFR 1.261-1 Through 1.280H-1T

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.381(a)-1 Through 1.383-3

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR, chapter I, part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Section 1.269-3(d) also issued under 26 U.S.C. 382(m). * * * Section 1.382-3 also issued under 26 U.S.C. 382(m). * * *

Par. 2. Section 1.269-1 is amended by removing "1.269-6" from the introductory text and adding "1.269-7" in lieu thereof.

Par. 3. Section 1.269-3 is amended as follows:

1. The last sentence of paragraph (a) concluding text is removed.

2. New paragraphs (d) and (e) are added to read as follows:

§ 1.269-3 Instances in which section 269(a) disallows a deduction, credit, or other allowance.

* * * * *

(d) *Ownership changes to which section 382(l)(5) applies; transactions indicative of purpose to evade or avoid tax*—(1) *In general.* Absent strong evidence to the contrary, a requisite acquisition of control or property in connection with an ownership change to which section 382(l)(5) applies is considered to be made for the principal purpose of evasion or avoidance of

Federal income tax unless the corporation carries on more than an insignificant amount of an active trade or business during and subsequent to the title 11 or similar case (as defined in section 382(l)(5)(G)). The determination of whether the corporation carries on more than an insignificant amount of an active trade or business is made without regard to the continuity of business enterprise set forth in § 1.368-1(d). The determination is based on all the facts and circumstances, including, for example, the amount of business assets that continue to be used, or the number of employees in the work force who continue employment, in an active trade or business (although not necessarily the historic trade or business). Where the corporation continues to utilize a significant amount of its business assets or work force, the requirement of carrying on more than an insignificant amount of an active trade or business may be met even though all trade or business activities temporarily cease for a period of time in order to address business exigencies.

(2) *Effective date.* The presumption under paragraph (d) of this section applies to acquisitions of control or property effected pursuant to a plan of reorganization confirmed by a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) after August 14, 1990.

(e) *Relationship of section 269 to 11 U.S.C. 1129(d).*

In determining for purposes of section 269 of the Internal Revenue Code whether an acquisition pursuant to a plan of reorganization in a case under title 11 of the United States Code was made for the principal purpose of evasion or avoidance of Federal income tax, the fact that a governmental unit did not seek a determination under 11 U.S.C. 1129(d) is not taken into account and any determination by a court under 11 U.S.C. 1129(d) that the principal purpose of the plan is not avoidance of taxes is not controlling.

Par. 4. Section 1.269-5 is revised to read as follows:

§ 1.269-5 Time of acquisition of control.

(a) *In general.* For purposes of section 269, an acquisition of control occurs when one or more persons acquire beneficial ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of share of all classes of stock of the corporation.

(b) *Application of general rule to certain creditor acquisitions.* (1) For purposes of section 269, creditors of an insolvent or bankrupt corporation (by themselves or in conjunction with other persons) acquire control of the corporation when they acquire beneficial ownership of the requisite amount of stock. Although insolvency or bankruptcy may cause the interests of creditors to predominate as a practical matter, creditor interests do not constitute beneficial ownership of the corporation's stock. Solely for purposes of section 269, creditors of a bankrupt corporation are treated as acquiring beneficial ownership of stock of the corporation no earlier than the time a bankruptcy court confirms a plan of reorganization.

(2) The provisions of this section are illustrated by the following example.

Example. Corporation *L* files a petition under chapter 11 of the Bankruptcy Code on January 5, 1987. A creditors' committee is formed. On February 22, 1987, and upon the request of the creditors, the bankruptcy court removes the debtor-in-possession from business management and operations and appoints a trustee. The trustee consults regularly with the creditors' committee in formulating both short-term and long-term management decisions. After three years, the creditors approve a plan of reorganization in which the outstanding stock of Corporation *L* is canceled and its creditors receive shares of stock constituting all of the outstanding shares. The bankruptcy court confirms the plan of reorganization on March 23, 1990, and the plan is put into effect on May 25, 1990. For purposes of section 269, the creditors acquired control of Corporation *L* no earlier than March 23, 1990. Similarly, the determination of whether the creditors acquired control of Corporation *L* with the principal purpose of evasion or avoidance of Federal income tax is made by reference to the creditors' purposes as of no earlier than March 23, 1990.

Par. 5. The section heading for § 1.269-6 is revised to read as follows:

§ 1.269-6 Relationship of section 269 to section 382 before the Tax Reform Act of 1986.

Par. 6. New § 1.269-7 is added to read as follows:

§ 1.269-7 Relationship of section 269 to sections 382 and 383 after the Tax Reform Act of 1986.

Section 269 and §§ 1.269-1 through 1.269-5 may be applied to disallow a deduction, credit, or other allowance notwithstanding that the utilization or amount of a deduction, credit, or other allowance is limited or reduced under section 382 or 383 and the regulations thereunder. However, the fact that the amount of taxable income or tax that may be offset by a deduction, credit, or other allowance is limited under section 382(a) or 383 and the regulations thereunder is relevant to the determination of whether the principal purpose of an acquisition is the evasion or avoidance of Federal income tax.

Par. 7. New § 1.382-3 is added to read as follows:

§ 1.382-3 Special rules under section 382 for corporations under the jurisdiction of a court in a title 11 or similar case.

(a) *Introduction.* Either section 382(l)(5) or section 382(l)(6) may apply to an ownership change which occurs in a title 11 or similar case (as defined in section 368(a)(3)(A)) if the transaction resulting in the ownership change is ordered by the court or is pursuant to a plan approved by the court. Terms and nomenclature used in this section, and not otherwise defined herein, have the same respective meanings as in section 382 and the regulations thereunder.

(b) *Application of section 382(l)(5).* Section 382(a) does not apply to any ownership change if—

(1) The old loss corporation is (immediately before the ownership change) under the jurisdiction of the court in a title 11 or similar case; and

(2) The pre-change shareholders and qualified creditors of the old loss corporation (determined immediately before the ownership change) own (after the ownership change and as a result of being pre-change shareholders or qualified creditors immediately before the ownership change) stock of the new loss corporation (or stock of a controlling corporation if also in bankruptcy) that meets the requirements of section 1504(a)(2) (determined by substituting "50 percent" for "80 percent" each place it appears).

(c) [Reserved]
(d) [Reserved]
(e) [Reserved]
(f) [Reserved]
(g) [Reserved]
(h) [Reserved]
(i) [Reserved]
(j) [Reserved]
(k) [Reserved]
(l) [Reserved]
(m) *Continuity of business requirement*—(1) *Under section 382(l)(5).* If section 382(l)(5) applies to an ownership change of a loss corporation, section 382(c) and the regulations thereunder do not apply with respect to the ownership change.

(2) [Reserved]
(n) [Reserved]

Dated: December 17, 1991.
Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.
Approved:
Kenneth W. Gideon,
Assistant Secretary of the Treasury.
[FR Doc. 91-31304 Filed 12-31-91; 1:39 pm]
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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 91-171]

Safety Zone; Boston Main Ship Channel, Boston Inner Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing an emergency safety zone in the waters of Boston Harbor between the Subaru Terminal in South Boston and Bird Island Flats (the southwest corner of Logan Airport) in East Boston. Vessel movements within this safety zone are permitted under the criteria set forth in this regulation. This action is necessary to protect the maritime community from the possible dangers and hazards to navigation associated with the extensive blasting and dredging operations to be conducted in conjunction with the construction of the Third Harbor Tunnel. The period of blasting will be from December 20, 1991 to April 1, 1992.

EFFECTIVE DATE: This regulation becomes effective at 6 a.m. local time, December 20, 1991 and terminates at 12:01 a.m., April 1, 1992.

ADDRESSES: The docket for this rulemaking is available for inspection or copying at room 232, U.S. Coast Guard Marine Safety Office, 455 Commercial Street, Boston, MA 02109-1045, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Christian C. Fahy, USCG Marine Safety Office Boston, at (617) 223-3000.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant (Junior Grade) Christian C. Fahy, project officer for the Captain of the Port Boston, and Lieutenant Commander John Astley, project attorney, First Coast Guard Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. The Coast Guard was informed less than a month ago of the exact methods which the contractors would be using to execute the contract specifications. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury to the persons and vessels involved.

Background and Purpose

The U.S. Coast Guard is establishing this emergency safety zone to enhance vessel safety during the extensive construction project for the Third Harbor Tunnel being undertaken by the contractors Morrison/Knudsen-Interbeton-White. The tunnel is part of a larger multi-year effort aimed at reducing automobile congestion within the city of Boston. The initial stage of construction involves blasting and dredging. The blasting and dredging portion of the tunnel construction is the first of a multi-phase process. The contractors anticipate finishing construction of the tunnel in mid-1994. The Coast Guard views the blasting portion of the construction as a concern for mariners, while contractors blast bedrock located beneath the subsurface of the channel on a line between the southwest corner of Logan Airport in East Boston and the Subaru Pier in South Boston. The purpose of the blasting is to form a trench across the subsurface of the main ship channel into which prefabricated sections of the tunnel can be placed. A blast will cause a 2-3 foot wave on the surface of the water in the immediate vicinity. No rock will be sprayed into the air due to the blast. Because the vibration shock of underwater blasting can potentially damage the hulls of vessels located too close to the operation, this zone will ensure that vessels transiting in the vicinity of the blasting area will maintain a safe distance to eliminate this risk. The safety zone also ensures that communication is established between the contractors and vessels transiting the waters within the safety zone. With proper communication between all parties, the contractor is assured of having ample time to comply with a request to move his operation temporarily to allow a vessel to navigate through the zone safely.

Description of the Blasting

On the average, contractors plan to conduct three blasts per day between sunrise and sunset, with each blast taking approximately four hours to set up. No blasting will take place when there is restricted visibility (the contractor must be able to see the shoreline of both South Boston and East Boston). Before each blast, personnel onboard the barge CGA-100 (100 feet x 52 feet x 12 feet) will drill ten holes (the width of the tunnel) and load the holes with the explosives. After retreating to a safe distance, the contractors will remotely detonate the explosives in the holes and then more ten feet down (across channel) to the next set of holes to be drilled. Operations will begin first on the East Boston side of the zone and move toward the South Boston side.

Description of the Dredging

The dredging operation will be taking place 24 hours per day, 7 days per week. In preparation for blasting operations, contractors will dredge the soft bottom of the subsurface of areas to be blasted until they reach bedrock. Performing the dredging will be the SUPERSCOOP (a clamshell dredge—225 feet x 75 feet), working with five separate scows into which dredged spoils will be placed. In general, the SUPERSCOOP will be positioned ahead of the CGA-100, also working from East to South Boston. During blasting operations, these vessels too will retreat to a safe distance from the blast. If there is a "high spot" of dredged material on the sea bed resulting from the blast, the SUPERSCOOP will swing around and remove that material immediately after the blast. After most blasting is complete, the SUPERSCOOP will conduct a second pass across the channel to dredge the blasted material.

Obstruction of the Channel

The CGA-100 will be postioned in line with the shipping channel. When in the channel, it will cause an obstruction of 60-65 feet (the width of the barge (52 feet) + 10-15 feet overhang from drills on the edge of the barge). The CGA-100 will be held in place by six anchors, which will extend outward 500 feet in all directions. Each anchor will be marked with a white buoy, which will be lighted at night with blinking white lights (60 flashes per minute). The navigational hazard associated with the anchoring system can be minimized, however, as the anchor wires can be "dropped" and made to lie on the bottom within 10 minutes after contractor's receipt of a notification of an impending vessel movement. Accordingly it is essential

that mariners passing between the barge and the anchor buoys communicate with the contractors to ensure that the anchor wires are "dropped" in order to eliminate this navigational hazard. The dredge SUPERSCOOP will also be positioned parallel to the channel. When in the channel, it will cause an obstruction of about 130 feet (the width of the SUPERSCOOP (75 feet) + (48 feet)—the width of the largest scows receiving dredged material (connected to the dredge by wire cables)). The SUPERSCOOP will be held in place by four anchors extending outward 500 feet in all directions, with the same "drop" capability as the blasting barge. Each anchor will be marked similarly with white buoys and blinking white lights (60 flashes per minute). Again, communications are essential for mariners passing between the dredge and its anchor buoys to ensure that the anchor wire can be "dropped" by the contractor if necessary. Through the dredge and the barge are being operated by the same contractor, all communications should be initiated with the SUPERSCOOP since that vessel has control over the entire project.

Notification of Blasting

Two hours, one hour, forty-five minutes, thirty minutes, and fifteen minutes prior to blasting, the contractors will broadcast on Channels 9, 13, and 16 VHF-FM their intention to conduct blasting operations. Approximately fifteen minutes before a blast round is to be fired, the signal will be given by the blaster for four clearly audible prolonged (4–6 seconds) horn/whistle signals to indicate that the blast area is being secured. Two work boats will be available for security of the immediate blast area. One boat will be placed approximately 1500 feet west of the blast area. The second boat will be placed 1500 feet east of the blast area. These boats will patrol and warn any vessel traffic of the impending blast. When the area is determined to be secure by the contractor, the blaster will signal with four clearly audible short (approximately one second duration) horn/whistle signals to indicate that the blast is going to be fired in one minute. The blast round will then be fired unless there is a last minute breakdown in the security of the blast area. If a vessel not involved with the blasting operating is within the safety zone at this point, the contractor *will not* blast. Immediately following the blast, the blaster will inspect the area and determine that it is clear to resume operations. At this point an all clear signal (4–6 second horn/whistle signal) will be given.

This safety zone is necessary to protect vessel traffic operating in Boston Harbor from the hazards associated with the proposed blasting operations and hazards to navigation due to the presence of contractor vessels in proximity to the Main Ship Channel, Boston Inner Harbor. Notice of this safety zone will be published in the Local Notice of Mariners and Safety Marine Information Broadcasts. Entry into this safety zone during blasting operations will be prohibited, unless authorized by the Captain of the Port Boston.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 on Federal Regulation and not significant under Department of Transportation Regulatory Policies and Procedures (44 CFR 11034; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. Costs to the shipping industry from these regulations, if any, will be minor and have no significant adverse financial effect on vessel operators. Deep draft vessel traffic, fishing vessels, and commuter or tour boats may experience slight delays (a few minutes) in departures or arrivals while waiting for the blast to occur, however, mariners can time their transit through the safety zone with contractors to minimize delays by communicating with the contractors using bridge to bridge marine radios.

Small Entities

Since this action will cause only slight, intermittent delays in transits by deep draft vessel traffic, fishing vessels, and commuter or tour boats and scheduling of transits and blasting operations can be adjusted as necessary in most cases to accommodate all parties, no significant adverse economic impact should result from this rulemaking. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded under section 2.B.2 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. An Environmental Impact Statement on construction of the Third Harbor Tunnel has already been issued by the Federal Highway Administration. In fact, implementation of this rulemaking should help to reduce the risk of collision or other marine accidents. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new temporary § 165.T01–171 is added to read as follows:

§ 165.T01–171 Safety Zone: Boston Main Ship Channel, Boston Inner Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone: All waters of the Boston Inner Harbor within an area described between two lines: one boundary line on the east extending across the Boston Main Ship Channel from the easternmost portion of the Massport North Jetty dock, So. Boston, to the landslide point in East Boston abeam Boston Main Ship Channel Lighted Buoy 12; and another boundary line on the west extending across the Boston Main Ship Channel from the northwest corner of the Boston Fish Pier, So. Boston to Cashman's drydock, East Boston (see attached chart).

(b) *Effective date.* This regulation becomes effective at 6 a.m., local time, December 20, 1991. It terminates at 12:01 a.m., local time, April 1, 1992.

(c) *Regulations.* (1) Except with permission of the Captain of the Port, all vessels must:

(i) Remain outside the safety zone (i.e., not operate or anchor within the area between the two boundary lines for

the safety zone) once the dredge SUPERSCOOP has given the final warning that a blast will occur (four clearly audible short, one second duration, horn/whistle signals one minute prior to the blast) and remain outside of the zone until the dredge SUPERSCOOP has given the all-clear signal (a horn/whistle signal sounded for a prolonged, 4-6 second interval). Vessels moored at the Massport North Jetty dock in So. Boston, Cashman's drydock in E. Boston, or the north face of the Boston Fish Pier in So. Boston may remain inside the safety zone provided they are securely moored.

(ii) Maintain at all times at least 100 yards distance from the blasting barge CGA-100, the dredge SUPERSCOOP, and all attending scows or tugs made fast to the SUPERSCOOP or CGA-100.

(iii) Maintain at all times a safe distance from anchors and anchor buoys deployed by the blasting barge CGA-100 and the dredge SUPERSCOOP.

(iv) Communicate with the SUPERSCOOP (the vessel in charge of the contractor's operation) on Channels 9, 13, or 16 VHF-FM to arrange for safe passage when the CGA-100 or SUPERSCOOP (or their anchors) are in the Boston Main Ship Channel; and if requesting barge CGA-100 and dredge SUPERSCOOP to slack anchor lines, provide at least 10 minutes notification of vessel transit to allow the barge and dredge to slack their anchor lines.

(v) Provide the contractor at least 4 hours advance notice (i.e., Channels 9, 13, or 16 VHF-FM or cellular phone (617-966-1670)) to move/suspend his operations in any case where the transitting vessel operator believes the safe passage of his vessel is jeopardized by the presence/operation of the CGA-100 and/or SUPERSCOOP.

(2) Except with the permission of the Captain of the Port, vessels involved with the Third Harbor Tunnel blasting and dredging operations must:

(i) CGA-100 and SUPERSCOOP: Mark anchors with white buoys, lighted at night with a white light (60 flashes per minute); and slack anchor lines to the bottom of the channel within 10 minutes after receipt of a request to do so from any vessel operator intending to transit the safety zone.

(ii) All vessels: Move/suspend operations and relocate to a safe position within four hours after receipt of a request to do so from any vessel operator expressing concern about the safety of any impending transit through the safety zone.

(iii) SUPERSCOOP: Communicate with and arrange safe passage through the safety zone for all vessels not involved in Third Harbor Tunnel blasting/dredging operations.

(iv) SUPERSCOOP: Initiate appropriate broadcast notices and warning signals to local mariners prior to and after conducting blasting operations. Two hours, one hour, forty-five minutes, thirty minutes, and fifteen minutes prior to blasting, broadcast on Channels 9, 13, and 16 VHF-FM the intention to conduct blasting operations. Approximately fifteen minutes before a blast round is to be detonated, give a signal of four clearly audible prolonged (4-6 seconds) horn/whistle signals to indicate that the blast area is being secured. Determine the blast area to be secured. Signal with four clearly audible short (approximately one second) horn/whistle signals to indicate that the blast is going to be detonated in one minute. Do not blast if a vessel not involved with the blasting operation is within the safety zone with the exception of vessels moored as described in paragraph (c)(1). Immediately following the blast, inspect/survey the blast area to determine whether it is clear to resume operations. Remove and debris that lessens the channel depth. Give an all clear signal (4-6 second horn/whistle signal) after area is determined to be clear to resume normal operations.

(v) All vessels: Relocate to a safe distance prior to conducting blasting operations.

(3) The Captain of the Port may, upon request, authorize a deviation from any rule in this section if he determines that the proposed operations can be done safely.

(4) The Captain of the Port may direct the movement of any vessel within the safety zone as appropriate to ensure the safe navigation of vessels through the safety zone.

Dated: December 17, 1991.

W.H. Boland, Jr.,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 92-158 Filed 1-3-92; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

[4310-55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1013-AB43

Extension of Temporary Subsistence Management Regulations for Federal Public Lands in Alaska

AGENCY: Forest Service, USDA. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final action extends the expiration date of December 31, 1991 for the "Temporary Subsistence Management Regulations for Public Lands in Alaska" (55 FR 27114), as amended by the "1991-1992 Seasons and Bag Limits for Subsistence Management Regulations for Public Lands in Alaska" (56 FR 29310) through June 30, 1992.

DATES: *Effective Date:* This rule will be effective December 31, 1991. The expiration date of the rule published June 29, 1990 (55 FR 27114) is extended through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3447. For questions specific to National Forest lands, contact Norman Howse, Assistant Director, Subsistence, USDA—Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802; telephone (907) 586-8890.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires the Secretary of the Interior and the Secretary of Agriculture to implement a joint program to grant a preference in favor of subsistence uses of fish and wildlife resources on Federal public lands unless the State of Alaska enacts and implements laws of general applicability consistent with ANILCA's requirements for the definition, preference and participation as specified in sections 803, 804, and 805. The State implemented such a program which the Department of the Interior previously found to be consistent with ANILCA. In December 1989, however,

the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute, which is required by ANILCA, violated the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990.

As a result of that decision, the Department of the Interior and the Department of Agriculture were required to assume responsibility for the implementation of title VIII of ANILCA on Federal public lands on July 1, 1990. On June 29, 1990 the "Temporary Subsistence Management Regulations for Public Lands in Alaska" were promulgated (55 FR 27114). Those regulations are codified at 36 CFR part 242 and 50 CFR part 100.

Subpart D of the temporary regulations, which addresses subsistence seasons and bag limits, methods and means restrictions, and related issues, routinely requires annual review and modification. Consequently, proposals for changes to this portion of the regulations were invited from the public. The Federal Subsistence Board, established by the temporary regulations, held meetings on the proposals, and took action in regard to the proposals which were reflected in a proposed rulemaking to amend subpart D published on April 16, 1991 (56 FR 15402). Following an additional public hearing and analysis of comments received, final subpart D regulations were published for the 1991–1992 subsistence seasons on June 26, 1991 (56 FR 29310). The amended subpart D became effective on July 1, 1991.

The preamble to the comprehensive temporary regulations of 1990 stated that the regulations would become effective on July 1, 1990 and remain in effect until December 31, 1991 (55 FR 27114). The preamble explained that: "The development of permanent regulations, which is expected to start in 1990, will involve extensive public interaction and comment throughout the regulations development process, and will be completed by December 31, 1991." *Id.* The preamble to the amendment to subpart D of the regulations, published in June of 1991, stated: "the seasons and bag limits herein reflect a complete regulatory year although they will presently expire on December 1, 1991" (56 FR 29310).

In order to ensure that the public's attention and comments in regard to the Federal Subsistence Management program are focused on all issues related to the program, considerable time has been spent in developing a comprehensive analysis of alternative approaches to Federal management of subsistence on Federal public lands. A draft environmental impact statement (DEIS) on "Subsistence Management for Federal Public Lands in Alaska" was developed and released for public review and comment in early October 1991. This DEIS includes a draft of the proposed rewrite of Federal subsistence management regulations for public lands. Public meetings to receive comments on the DEIS took place in October and November 1991. Comments regarding the DEIS, and consequently, the form and content of the Federal Subsistence Management Program will then be analyzed. The result will be a final environmental impact statement and development of final regulations to replace the current temporary regulations.

To allow for adequate public review and comment on the form that the Federal program should take, the development of the final subsistence management regulations has been delayed. Consequently, it is proposed to extend the applicability of subparts A, B, and C of the temporary regulations as promulgated in 1990, and subpart D as amended in 1991, through June 30, 1992.

Summary of Comments

A Proposed Rule was published in the **Federal Register** on December 5, 1991, (56 FR 63702), with a comment period that ended December 20, 1991. A public hearing was held on December 18, 1991, in Anchorage, Alaska. No comments were received at the public hearing. Two comments were received prior to the close of the public comment period. One comment was in favor and one objected to the proposed action.

Analysis of Comments

One person commented expressing objection to the extension of the temporary subsistence regulations because the Federal Government adopted regulations based on those regulations adopted by the State of Alaska. The commenter believes those regulations to be flawed. The commenter urges adoption of regulations that acknowledge the long standing practices of members of the Sitka community relative to subsistence resource use.

The purpose of extending the effective date of the temporary subsistence regulations (subparts A, B, C, and D) from December 31, 1991 to June 30, 1992, is to do exactly that which the commenter urges. That is to allow for adequate public review and comment on adoption of regulations for a Federal Subsistence Management Program. It is the intent to have the temporary subsistence regulations effective concurrently with the public review and comment period on proposed rules, so that there would be no interruption of subsistence uses pending completion of the regulatory process for subparts A, B, C, and D. By not extending the effective date of the temporary subsistence regulations would likely halt the Federal Subsistence Management Program in Alaska and disallow rural residents of Alaska the subsistence taking of fish and wildlife resources. The end result would be a potential hardship on subsistence users; thus, possibly requiring alternative means by subsistence users for obtaining fish and wildlife resources.

The regulatory process for the Federal Subsistence Management Program has been continuing with the proposed rule for Subpart D published in the **Federal Register** on December 9, 1991, with a 45-day public comment period that will end January 23, 1992. It is anticipated that the proposed rule for subparts A, B, and C will be published in the **Federal Register** in early January 1992 and will provide for a 30 or 45-day public comment period. As such, the commenter will be provided with an opportunity to comment on the proposed rules for subparts A, B, C, and D. The issues raised by the commenter relate specifically to information contained in the proposed rule for subparts A, B, and C anticipated for publication in early January 1992.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A DEIS, "Subsistence Management for Federal Public Lands in Alaska," was released on October 7, 1991. A final EIS and Record of Decision will be issued prior to implementation of the final "Subsistence Management Regulations for Federal Public Lands in Alaska, subparts A, B and C."

ANILCA Section 810 Compliance

The intent of all Federal Subsistence Regulations is to best accommodate customary and traditional subsistence uses subject to the limitation of protecting healthy, or natural and healthy fish and wildlife populations. The 810 analysis will be completed as part of the final EIS process.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501 et seq. They apply to subsistence users of Federal public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–00075.

Public reporting burden for this form is estimated to average .1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1016–0075), Washington, DC 20903. Additionally, information collection requirements may be imposed if the councils and committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

Executive Order 12291, "Federal Regulation," of February 19, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one 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, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The Departments of the Interior and Agriculture have determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, and certify that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue pre-existing uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on Federal public lands. The scope of this program is limited by definition to certain Federal lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

Effective Date of Rule

In accordance with 5 U.S.C. 553(d)(1), the Departments of the Interior and Agriculture have determined that this rule should be made effective on December 31, 1991. The Final Rule is considered to be a substantive rule, the provisions of which will relieve restrictions to subsistence users by allowing the taking of fish and wildlife resources. Any delay in the effective date beyond December 31, 1991, would likely halt the Federal Subsistence Management Program in Alaska and disallow rural residents of Alaska the subsistence taking of fish and wildlife resources.

Drafting Information

This regulation was drafted by Sharon E. Fleek, under the guidance of Richard S. Pospahala, both of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public lands, Reporting and recordkeeping, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, chapter I, subchapter H of title 50 and chapter II of title 36 of Code of Federal Regulations are amended in an identical fashion in 36 CFR part 242 and 50 CFR part 100 as follows:

1. The authority citation for 50 CFR part 100 and 36 CFR part 242 continues to read as follows:

Authority: 16 U.S.C. 472, 551, 668dd et seq., 3101 et seq.; 18 U.S.C. Chapter 227; 43 U.S.C. 1733.

2. The expiration date for 50 CFR part 100 and 36 CFR part 242 is delayed until June 30, 1992.

§ ____.15(c) [Amended]

3. Section ____.15(c) is amended by removing the first sentence.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

Michael A. Barton,

Regional Forester, USDA—Forest Service.

[FR Doc. 91-31338 Filed 12-31-91; 12:20 pm]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE 5-2-5329; FRL-4088-4]

Approval and Promulgation of Air Quality Implementation Plans; Revision to the Delaware Motor Vehicle I/M Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision amends Regulation XXVI (26), Motor Vehicle Emissions Inspection Program, of the Delaware Regulations Governing the Control of Air Pollution. The regulation revisions became effective in the State on April 1, 1990. These amendments expand the motor vehicle inspection and maintenance (I/M) program area from New Castle County to the entire State of Delaware, add carbon monoxide (CO) emissions standards to the statewide program, modify the inspection test procedure and increase the cost repair limit for waivers. These amendments will result in additional reductions in both volatile organic compounds (VOCs) and CO emissions. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective March 6, 1992 unless EPA receives notice on or before February 5, 1992 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at U.S.

Environmental Protection Agency, Region III, Air Program Branch, Air, Radiation and Toxics Management Division, 841 Chestnut Building, Philadelphia, PA 19107, Attn: David Arnold; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903, Attn: Robert Taggart.

FOR FURTHER INFORMATION CONTACT: Mrs. Kelly Bunker, (215) 597-4554; FTS 597-4554.

SUPPLEMENTARY INFORMATION: On March 6, 1990, the State of Delaware submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a revision to the Reid Vapor Pressure (RVP) limitation on gasoline sold in Delaware and a revision to amend Regulation XXVI (26), Motor Vehicle Emissions Inspection Program, and Technical Memoranda numbers 1 and 2, which are appendices to Regulation XXVI (26), of the Delaware Regulations Governing the Control of Air Pollution. This notice will address the amendments to Regulation XXVI (26), of the Delaware Regulations Governing the Control of Air Pollution. The gasoline RVP amendment is being addressed under a separate rulemaking action.

As part of the 1982 revision to the Delaware SIP for ozone, the State committed to implement a motor vehicle inspection and maintenance (I/M) program. This program was approved on March 6, 1980 (45 FR 14551), March 11, 1982 (45 FR 10535) and October 17, 1983 (45 FR 46986). The Delaware I/M program was implemented in January of 1983. The SIP required that light duty vehicles and trucks registered in New Castle County be tested for hydrocarbon emissions only. On March 6, 1990, the State of Delaware submitted a revision to its SIP's I/M Program. This revision expands coverage of the I/M program to include the entire state, establishes statewide carbon monoxide (CO) standards, modifies the inspection test procedures and revises waiver cost repair limits.

As a result of the 1988 EPA audit of the Delaware I/M program, EPA recommended that the State adopt CO standards and test for CO emissions. Although Delaware is not a nonattainment area for CO, the introduction of CO standards would be beneficial to the State. Testing for CO could help yield additional hydrocarbon emission reduction benefits, aid in the diagnosis of engine problems, and might reduce the cost of repairs.

The statewide expansion of the I/M program will increase the number of vehicles tested for exhaust emissions from approximately 250,000 vehicles to approximately 450,000 vehicles. By expanding the program to include Kent and Sussex counties, significant additional reductions in both VOC and CO emissions will be realized within the State.

The statewide CO standards and addition of hydrocarbon standards for the Kent and Sussex counties became effective on April 1, 1990. Table 1 shows the new standards that are being implemented by the State. These emission standards replace the standards in Table 2 of Technical Memorandum #2, Regulation XXVI (26), Exhibit H of the current Delaware SIP.

TABLE 1* A. New Castle County Emission Standards.

Group	Light duty vehicle	Light duty truck	Hydrocarbon limit	*Carbon monoxide limit (%)*
1	'68–'70	'70–'72	900 ppm	*9.00*
2	'71–'74	'73–'78	600 ppm	*6.00*
3	'75–'79	'79–'83	400 ppm	*4.00*
4	'80	(None)	220 ppm	*2.00*
5	'81 Plus	'84 Plus	220 ppm	*1.20*

B. Kent and Sussex County Emission Standards Through March 31, 1991. Effective April 1, 1991, the Kent and Sussex County emission standards will be adjusted to reflect the New Castle County emission standards in existence at that time.

Group	*Light duty vehicle*	*Light duty truck*	*Hydrocarbon limit*	*Carbon monoxide limit (%)*
1	*'68–'70*	*'70–'72*	*1000 ppm*	*10.00*
2	*'71–'74*	*'73–'78*	*700 ppm*	*7.00*
3	*'75–'79*	*'79–'83*	*500 ppm*	*5.00*
4	*'80*	*(None)*	*275 ppm*	*3.00*
5	*'81 Plus*	*'84 Plus*	*220 ppm*	*1.20*

C. Whenever the Department of Natural Resources and Environmental Control determines that the standards in Part A do not provide the minimal required hydrocarbon reduction, the following standards will become effective statewide on the first day of the subsequent calendar quarter (i.e., January, April, July, or October).

Group	Light duty vehicle	Light duty truck	Hydrocarbon limit	*Carbon monoxide limit (%)*
1	'68–'70	'70–'72	800 ppm	*8.00*
2	'71–'74	'73–'78	500 ppm	*5.00*
3	'75–'79	'79–'83	350 ppm	*3.50*
4	'80	(None)	220 ppm	*2.00*
5	'81 Plus	'84 Plus	220 ppm	*1.20*

*The new standards and requirements are italicized.

This amendment also revises Technical Memorandum #1 entitled Motor Vehicle Inspection and Maintenance Program, Vehicle Test Procedure and Machine Calibration. Technical Memorandum #1 is revised to eliminate the use of the manual Sun Model CEA-3023 emission analyzer and require instead the use of the Computerized Allen Test Products 53-500 emission analyzer, which the State has been using since late 1983. The amendment also revises the inspection procedures to conform with the test procedure specifications of the computerized Allen emission analyzer by requiring the analyzers to be calibrated on a daily basis as recommended by the EPA in the 1988 audit report. The concentration of the gas used to calibrate the analyzer will be 1.6% carbon monoxide, 11% carbon dioxide, 600 parts per million propane with the balance in nitrogen.

This amendment also revises the waiver cost repair limit. The waiver cost repair limit for model years 1968 through 1980 will remain at a minimum of $75.00 and the waiver cost repair limit for model years 1981 to the present will increase from $75.00 to a minimum of $200.00. However, vehicles less than 5 years old and with odometer readings under 50,000 miles, are still under warranty and are therefore not eligible for a waiver. The minimum reasonable cost should not be construed as an amount which must be spent as a condition of compliance after an initial failure. The cost relates only to granting of waivers.

This revision to the Delaware SIP regulations was adopted by the Department of Natural Resources & Environmental Control (DNREC) on January 31, 1990. As required by 40 CFR 51.102, the State of Delaware has certified that, after adequate public notice, on June 6, 1989, DNREC held a public hearing with respect to this SIP revision.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, on or before 30 days after date of publication, EPA receives notice that adverse or critical comments will be submitted. If EPA receives such notice, EPA will withdraw this action before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on March 5, 1992.

Final Action

EPA is approving this revision to the Delaware SIP which amends Regulation XXVI (26), Motor Vehicle Emissions Inspection Program, and Technical Memoranda numbers 1 and 2, which are appendices to Regulation XXVI (26), of the Delaware Regulations Governing the Control of Air Pollution by expanding the I/M Program Statewide, adopting CO emission standards, modifying the inspection test procedures and increasing the waiver cost repair limits.

The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the requirements of the 1990 Clean Air Act amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal of the request preceded the date of enactment.

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

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

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 5, 1992. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution, control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: December 17, 1991.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

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

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

Authority: 42 U.S.C. 7401-7642.

Subpart I—Delaware

2. Section 52.420 is amended by adding paragraph (c)(43) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(43) Revision to the State Implementation Plan submitted by the Delaware Department of Natural Resources and Environmental Control on March 6, 1990, amending portions of Regulation XXVI (26) of the Delaware *Regulations Governing the Control of Air Pollution* by expanding the I/M program statewide, adopting CO cutpoints statewide, modifying the test procedures, and increasing the waiver cost repair limit.

(i) Incorporation by reference.

(A) Letter from the Delaware Department of Natural Resources and Environmental Control dated March 6, 1990 submitting a revision to the Delaware State Implementation Plan.

(B) Sections 1, 2, 4 and 6 of Regulation XXVI (26), Motor Vehicle Emissions Inspection Program, of the Delaware *Regulations Governing the Control of Air Pollution* and the two (2) Technical Memoranda, Numbers 1 and 2, which are appendices to Regulation XXVI (26), of the Delaware *Regulations Governing the Control of Air Pollution.*

(ii) Additional materials—remainder of State submittal.

[FR Doc. 92-72 Filed 1-3-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[OAQPS # AZ4-1-5261; FRL-4083-8]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision; Maricopa County Bureau of Air Pollution Control

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of direct final rulemaking.

SUMMARY: EPA is granting full approval to rule 220, Permits to Operate, and rule 335, Architectural Coatings, adopted by the Maricopa County Bureau of Air Pollution Control (the District) for inclusion in the Arizona State Implementation Plan (SIP). EPA is approving these rules because they strengthen the SIP. The revisions were officially submitted to EPA by the Arizona Department of Environmental Quality (DEQ) on January 4, 1990. The submittal was reviewed for completeness and Arizona was notified that it was complete on May 25, 1990. Rule 220 regulates criteria pollutants through permitting of operations in existing facilities. Rule 335 regulates emissions of volatile organic compounds (VOCs), which are precursors of ozone (smog), from architectural coatings. EPA has evaluated these rules and is granting full approval of rule 220 (permitting) under section 110(k) of the Clean Air Act Amendments of 1990 (CAAA) as meeting the requirements of section 110(a), and full approval of rule 335 (coatings) under sections 110(k) as meeting the requirements of section 110(a) and part D of the CAAA.

DATES: This action will be effective on March 6, 1992 unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to: Daniel Meer, Southern Rulemaking Section A-5-3), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revision and EPA's detailed Technical Support Document for the rules are available for public inspection at EPA's Region 9 office (address above) during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Arizona Department of Environmental Quality, Air Quality Planning Office, 2005 N. Central Avenue, Phoenix, AZ 85004.

Maricopa County Air Pollution Control, 1845 E. Roosevelt Street, Phoenix, AZ 85006.

FOR FURTHER INFORMATION CONTACT: William E. Davis, Jr., Southern Rulemaking Section (A-5-3), Air and Toxics Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1183, (FTS) 484-1183; Fax: (415) 744-1076, (FTS) 484-1076.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1988, EPA notified the Governor of Arizona that the District's portion of the Arizona SIP was inadequate to attain and maintain the National Ambient Air Quality Standard (NAAQS) for ozone and requested that certain deficiencies relating to VOC controls and the application of reasonably available control technology (RACT) in the existing SIP be corrected (EPA's SIP-Call, 53 FR 34500). On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990 (CAAA), Public Law 101-549, 104 Stat. 1399, codified at §§ 7401-7671q. In section 182(a)(2)(A) of the CAAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient RACT rules and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. Maricopa County was subject to the May 15, 1991, deadline. The District adopted the architectural coating rule being approved in this notice in July of 1988, and the Arizona DEQ, acting as the Governor's designee, submitted it to EPA on January 4, 1990 in response the SIP-Call. This submission also serves as a submission under section 182(a)(2)(A). At the same time, but not related to the SIP-Call or section 182(a)(2)(A), the Arizona DEQ submitted an operating permits rule, which is also being approved in this notice.

EPA Evaluation

The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to EPA (January 4, 1990) and has determined that the Agency must apply later amendments to the law to the revision. Therefore, the Agency has reviewed this request for revision of the SIP for conformance with the CAAA enacted on November 15, 1990.

EPA evaluated rule 335, Architectural Coatings, against the requirements found in section 110 and part D of the CAAA, 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans), and EPA policy. Among those provisions is the requirement that a VOC rule provide, at a minimum, for the implementation of RACT for major stationary sources of VOC emissions. This requirement was carried forward from the preamended Clean Air Act. EPA has published a series of Control Technique Guidelines (CTGs) for a variety of stationary sources which provides guidance on what constitutes RACT for the subject sources. However, while these CTGs represent RACT for a variety of categories, EPA did not publish a CTG for the category of architectural coatings. EPA therefore evaluated this rule against the EPA approved rule in the existing SIP and other EPA approved architectural coating rules in Region 9, which can be considered to be RACT. Additionally, EPA VOC policy requirements are found in the document entitled, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register**" (appendix D or the "Blue Book"). The rule meets all of the requirements specified in these regulations and documents except for a minor provision identified below and it is, therefore, approved. Details of the evaluation can be found in EPA's Technical Support Document for the rule.

EPA evaluated rule 220, Permits to Operate, against requirements of section 110 of the CAAA, 40 CFR part 51, and EPA policy. The rule meets all of the requirements specified in these regulations and documents and it is, therefore, approved. Details of the evaluation can be found in EPA's Technical Support Document for the rule. Rule 220 will ultimately be required to comply with the regulations forthcoming under title V of the CAAA. However, these regulations have not been promulgated in final form at this date and several years will pass before the District is required to comply. EPA is approving this rule at this time because it strengthens the SIP.

Rule 335, Architectural Coatings

This rule regulates VOCs emitted from coatings applied to stationary structures, mobile homes, pavements and curbs. It limits VOC emissions by limiting the amount of VOC in the coatings.

This rule strengthens the current SIP. Unlike the SIP rule, the revised rule lists VOC limits that are being achieved by industry for a variety of specialty coatings. It also specifies labeling requirements limiting the use of thinners

containing VOCs to prevent exceeding the VOC limits specified for a coating. In addition, test methods for determining compliance are specified in the revised rule. None of these provisions are present in the current SIP and these added provisions are, therefore, a strengthening of the SIP. There is one minor deficiency in the rule. The rule is not consistent with EPA policy because the non-precursor (to ozone) organic compound definition, which is part of the VOC definition, lacks four HCFCs designated by EPA as photochemically unreactive and not precursors of ozone. However, this rule was submitted prior to the EPA's policy change adding these HCFCs to the definition of VOC. In addition, these HCFCs are not usually found in paints. Therefore, the deficiency is considered negligible and the rule can be grandfathered under EPA's "Guidance on Grandfathering of Requirements for Pending SIP Revisions", dated June 27, 1988. The strengthening provisions of rule 335 far outweigh this minor problem. Therefore, this rule is given full approval under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAAA.

Rule 220, Permits to Operate

This rule provides for control of air contaminants through the issuance of operating permits for existing stationary sources. The rule strengthens the existing SIP. It defines major stationary sources, adds procedures and a compliance schedule for demonstrating that the major sources are complying with RACT, and provides for an annual inspection of the source by the Control Officer to determine the adequacy of the control equipment. No deficiencies were found in this rule and EPA is approving it under section 110(k)(3) as meeting the requirements of section 110(a) of the CAAA.

EPA Proposed Action

EPA has evaluated these rules for consistency with the CAAA, 40 CFR part 51 and EPA policies. The rules were found to be consistent with the requirements in those regulations and documents with only a minor exception. EPA is granting full approval of rule 335 under section 110 and part D of the CAAA, and rule 220 under section 110 of the CAAA.

The changes related to the operating permit rule (rule 220) in the Maricopa County Bureau of Air Pollution Control District strengthens the rule in the existing SIP. Today's action does not constitute approval of, or action on, an operating permit program pursuant to 40 CFR 51.166(b)(17) (54 FR 27281) with respect to the federal enforceability of operating permits under the Federal New Source Review rules.

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

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective March 5, 1992 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective March 5, 1992.

Regulatory Process

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

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1991, the Office of Management and Budget extended the waiver of Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act as amended in 1990, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 5, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of the rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: December 6, 1991.

Daniel W. McGovern,

Regional Administrator.

Title 40 of the Code of Federal Regulations, part 52, subpart D is amended to read as follows:

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

Authority: 42 U.S.C. 7401–7642.

Subpart D—Arizona

2. Part 52.120 is amended by adding paragraph (c)(67) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(67) Regulations for the Maricopa County Bureau of Air Pollution Control were submitted on January 4, 1990 by the Governor's designee.

(i) Incorporation by reference.

(A) Amended regulations: Regulation II, rule 220 and Regulation III, rule 335, both adopted July 13, 1988.

[FR Doc. 92-182 Filed 1-3-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 300

[FRL-4090-6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of sites from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of two sites from the Superfund National Priorities List (NPL). The NPL is appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The sites are Beachwood/Berkeley Wells in Ocean County, New Jersey, and Johns' Sludge Pond in Wichita, Kansas. EPA, in consultation with New Jersey and

Kansas, has determined that all appropriate Fund-financed response under CERCLA has been implemented and that no further response action by responsible parties is appropriate. EPA has concluded that conditions at the sites are protective of human health, and the environment. Both States have concurred on the deletion of the sites from the NPL.

EFFECTIVE DATE: January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Carter H. Strickland, Environmental Protection Agency, 401 M Street SW. (Mail Code—OS-220W), Washington, DC 20460, (703) 308-8338.

SUPPLEMENTARY INFORMATION: Under section 105(a)(8)(B) of CERCLA, EPA has established the NPL as a list of priorities among known or threatened releases of hazardous substances, pollutants and contaminants throughout the United States, for potential response action. Sites on the NPL may be the subject of Hazardous Substance Superfund (Fund) financed remedial actions. Sites are deleted from the NPL when all appropriate response actions have been implemented or investigation of the site has shown that the site poses no significant threat. Any sites deleted from the NPL remain eligible for Fund-financed remedial action in the event that conditions at the site are later found to warrant such action. Section 300.425(e)(3) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) provides that whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. Specific information about each site follows.

Beachwood/Berkeley Wells

The Beachwood/Berkeley Wells site is located in Ocean County, New Jersey. EPA published a Notice of Intent to Delete the Beachwood/Berkeley Wells site from the NPL on July 12, 1991 (56 FR 31900). EPA also published a notification in a local newspaper on July 12, 1991. The comment period ended on August 12, 1991. EPA received no comments. Entries in the Deletion Docket may be reviewed at the EPA Region II office in New York, New York and at the Berkeley Township Library, in Bayville, New Jersey; the Beachwood Borough Library in Beachwood, New Jersey; and the New Jersey Department of Environmental Protection in Trenton, New Jersey.

Johns' Sludge Pond

The Johns' Sludge Pond site is located in Wichita, Kansas. EPA published a Notice of Intent to Delete the Johns' Sludge Pond site from the NPL on September 10, 1991 (56 FR 46142). EPA also published a notification in the principal local newspaper on September 8, 1991. The comment period ended on October 21, 1991. EPA received no comments. Entries in the Deletion Docket may be reviewed at the EPA Region VII office in Kansas City, Kansas, and at the Department of Public Works at the City Hall in Wichita, Kansas. It is EPA's policy to conduct a Five-Year Review at sites in which hazardous substances remain above levels which allow for unlimited use and unrestricted exposure. A Five-Year Review was conducted at this site in December 1990 at which time it was determined that the remedy remains protective of human health and the environment.

List of Subjects in 40 CFR Part 300

Hazardous waste.

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: Section 105, Pub. L. 96-510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92-500 as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237; E.O. 11735, 38 FR 21243.

Appendix B—[Amended]

2. The first table in appendix B is amended as follows:

a. Remove NPL Rank 408 from Group 9 (Beachwood/Berkeley Wells) and redesignate 409 through 1069 as 408 through 1068;

b. Remove newly redesignated NPL Rank 648 from Group 12 (Johns' Sludge Pond) and redesignate 649 through 1068 as 648 through 1067;

c. The heading "Group 9 (HRS Scores 42.33–41.60)" is revised to read "Group 9 (HRS Scores 42.33–41.59);"

d. The heading "Group 10 (HRS Scores 41.59–31.89)" is revised to read "Group 10 (HRS Scores 41.44–39.88);"

e. The heading "Group 11 (HRS Scores 39.88–38.20)" is revised to read "Group 11 (HRS Scores 39.87–38.20);"

f. The heading "Group 12 (HRS Scores 38.20–37.63)" is revised to read "Group 12 (HRS Scores 38.17–37.62);"

g. The heading "Group 13 (HRS Scores 37.62–35.79)" is revised to read "Group 13 (HRS Scores 37.52–35.76);"

h. The heading "Group 14 (HRS Scores 35.79–35.35)" is revised to read "Group 14 (HRS Scores 35.72–35.34);"

i. The heading "Group 15 (HRS Scores 35.35–34.21)" is revised to read "Group 15 (HRS Scores 35.34–34.21);"

j. The heading "Group 16 (HRS Scores 34.21–33.73)" is revised to read "Group 16 (HRS Scores 34.21–33.71);"

k. The heading "Group 17 (HRS Scores 33.73–32.87)" is revised to read "Group 17 (HRS Scores 33.71–32.69);"

l. The heading "Group 18 (HRS Scores 32.77–31.94)" is revised to read "Group 18 (HRS Scores 32.65–31.90);"

m. The heading "Group 19 (HRS Scores 31.94–30.93)" is revised to read "Group 19 (HRS Scores 31.86–30.83);"

n. The heading "Group 20 (HRS Scores 30.83–29.85)" is revised to read "Group 20 (HRS Scores 30.78–29.81);" and

o. The heading "Group 21 (HRS Scores 29.85–28.90)" is revised to read "Group 21 (HRS Scores 29.78–28.90);"

Dated: December 27, 1991.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 92-79 Filed 1-3-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7530]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

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 fourth 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 National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202)

646–2717, Federal Center Plaza, 500 C Street, SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (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 measures 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 a Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth 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, 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 area 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.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and Floodplains.

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, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date
New Eligibles—Regular Program			
Indiana:			
Markle, town of, Wells & Huntington Counties [1]	180457	November 7, 1991	
Sweetser, town of, Grant County [2]	180503	.....do	
Upland, town of, Grant County [2]	180504	.....do	
Van Buren, town of, Grant County [2]	180469	.....do	
Michiana Shores, city of, Laporte County	180505	November 12, 1991	NSFHA.
Maine:			
Wiscasset, town of, Lincoln County	230223	November 20, 1991	April 16, 1991.
Criehaven, township of, Knox County [3]	231034	April 4, 1979, Emerg; April 30, 1984, Reg	NSFHA.
New Eligible—Emergency Program			
Indiana:			
Montpelier, city of, Blackford County [4]	180501	November 8, 1991	
Blackford County, Unincorporated Areas	180478	.....do	
Shamrock Lakes, town of, Blackford County [4]	180502	.....do	
Iowa: Clemons, city of, Marshall County	190201	November 18, 1991	November 5, 1976.
Georgia: Cook County, Unincorporated Areas	130501	November 20, 1991	
Michigan: Bruce, township of, Macomb County	260884	November 27, 1991	
Texas: Bailey, town of, Fannin County	480808	November 29, 1991	November 5, 1976.
Reinstatements—Regular Program			
Ohio: Perry County, Unincorporated Areas	390778	May 19, 1977, Emerg; September 27, 1991, Reg; September 27, 1991, Susp; November 6, 1991, Rein.	September 27, 1991.
New York: West Union, town of, Steuben County	361437	June 27, 1975, Emerg; July 1, 1988, Reg; July 4, 1989, Susp; November 6, 1991, Rein.	July 1, 1988.
Utah: Castle Dale, city of, Emery County	490059	July 25, 1975, Emerg; May 1, 1980, Reg; May 17, 1989, Susp; November 8, 1991, Rein.	May 1, 1980.
Wyoming: Lovell, town of, Big Horn County	560073	August 30, 1976, Emerg; October 1, 1986, Reg; August 15, 1989, Susp; November 12, 1991, Rein.	October 1, 1986.
New York: Cold Brook, village of, Herkimer County	360298	February 10, 1976, Emerg; July 3, 1985, Reg; July 3, 1985, Susp; November 18, 1991, Rein.	July 3, 1985.
Pennsylvania: Jackson, township of, Perry County	421952	January 28, 1976, Emerg; October 15, 1985, Reg; October 15, 1985, Susp; November 25, 1991, Rein.	October 15, 1985.
Vermont: Proctor, town of, Perry County	500265	April 17, 1974, Emerg; December 1, 1978, Reg; June 18, 1990, Susp; November 27, 1991, Rein.	December 1, 1978.
Wisconsin: Richland County, Unincorporated Areas	550356	June 16, 1975, Emerg; September 27, 1991, Reg; September 27, 1991, Susp; November 29, 1991, Rein.	September 27, 1991.
Regular Program Conversions			
Region I			
New York: Grove, town of, Allegany County	361005	November 6, 1991. Suspension withdrawn	November 6, 1991.
Region III			
West Virginia: Nicholas County, Unincorporated Areas.	540146	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Region VI			
Oklahoma: Dewar, town of, Omulgee County	400143	do	Do.
Region II			
New York: Hounsfield, town of, Jefferson County	360340	November 20, 1991. Suspension withdrawn	November 20, 1991
Region III			
Pennsylvania: Whitpain, township of, Montgomery County.	420713	do	Do.
Region IV			
Georgia:			
Clayton County, Unincorporated Areas	130041	do	November 6, 1991.
Riverdale, city of, Clayton County	130047	do	Do.
South Carolina: Chesterfield County, Unincorporated Areas.	450228	do	Do.
Region V			
Wisconsin:			
Burnett County, Unincorporated Areas	550032	do	November 20, 1991.
Pittsville, city of, Wood County	550517	do	November 6, 1991.
Waushara County, Unincorporated Areas	550540	do	Do.
Region VI			
Oklahoma: Washington County, Unincorporated Areas.	400459	November 20, 1991. Suspension withdrawn	November 20, 1991.
Minimal Conversions			
Region V			
Michigan: Chester, township of, Ottawa County	260829	do	November 20, 1991.
Cascade, township of, Kent County	260814	November 28, 1991. Suspension withdrawn	November 6, 1991.

[1] The Town of Markle has adopted the Wells County (180288) FIRM.
[2] The Towns of Sweetser, Van Buren and Upland have adopted the Grant County (180435) FIRM.
[3] The following communities (Ragged Island #230940, Wooden Ball Island #230959, Seal Island #230948, and Matinicus Rock #230949), are no longer participating in the National Flood Insurance Program as separate governmental entities and should be deleted from the National Flood Insurance Program. They have formed the *Township of Criehaven*. The new community is under the Land Use Regulatory Commission (LURC). In order to avoid confusion, the Township of Crehaven has been issued a
[4] The Town of Shamrock Lakes and City of Montpelier have adopted Blackford County (180478) FHBM.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

C.M. "Bud" Schauerte,
Administrator, Federal Insurance Administration.

[FR Doc. 92-171 Filed 1-3-92; 8:45 am]

BILLING CODE 6718-21-M

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44 CFR Part 64

[Docket No. FEMA 7531]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (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. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial

flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final day rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule is promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance-Floodplains

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, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Regular Program Conversions				
Region II				
New York:				
Pamelia, town of, Jefferson County	360346	July 7, 1976, Emerg; July 30, 1982, Reg; January 2, 1992, Susp.	January 2, 1992	January 2, 1992.
Evans Mills, Village of, Jefferson County	360337	September 18, 1975 Emerg; February 5, 1986, Reg; January 2, 1992, Susp.	January 2, 1992	Do.
Region III				
Pennsylvania: Lower Heidelberg, Township of, Berks County.	421077	July 18, 1975, Emerg; August 16, 1982, Reg; January 2, 1992, Susp.	January 2, 1992	Do.
Region VII				
Iowa: LeGrand, City of, Marshall County	190606	December 5, 1977, Emerg; September 1, 1987, Reg; January 2, 1992, Susp.	September 1, 1987	Do.
Region X				
Alaska: Fairbanks-Northstar, Borough of, Fairbanks Division.	025009	May 15, 1970, Emerg; June 25, 1969, Reg; January 2, 1992, Susp.	January 2, 1992	Do.
Region II				
New York:				
Leroy, town of, Jefferson County	360341	June 12, 1975, Emerg; January 16, 1992, Reg; January 16, 1992, Susp.	January 16, 1992	January 16, 1992
Wilna, town of, Jefferson County	360357	June 24, 1975, Emerg; January 16, 1992, Reg; January 16, 1992, Susp.	January 16, 1992	Do.
Region IV				
Mississippi: Tylertown, City of, Walthall County	280175	February 27, 1975, Emerg; September 30, 1988, Reg; January 16, 1992, Susp.	January 16, 1992	Do.
South Carolina: Greenville County, Unincorporated Areas.	450089	February 12, 1974, Emerg; December 2, 1980, Reg; January 16, 1992, Susp.	January 16, 1992	Do.
Tennessee: Franklin County, Unincorporated Areas.	470344	June 12, 1991, Emerg; January 2, 1992, Reg; January 16, 1992, Susp.	January 2, 1992	Do.
Georgia: Fulton County, Unincorporated Areas	135160	November 20, 1970, Emerg; October 29, 1971, Reg; January 16, 1992, Susp.	January 2, 1992	Do.
Region V				
Illinois: Marengo, City of McHenry County	170482	June 27, 1973, Emerg; August 1, 1979, Reg; January 16, 1992, Susp..	January 2, 1992	Do.
Michigan:				
Ann Arbor, City of, Washtenaw County	260213	April 19, 1973, Emerg; June 15, 1982, Reg; January 16, 1992, Susp.	January 2, 1992	Do.
Lapeer, City of, Lapeer County	260112	November 25, 1974, Emerg; June 15, 1979, Reg; January 16, 1992, Susp.	January 2, 1992	Do.
Missouri: Clarkson Valley, Village of, St. Louis County.	290340	May 27, 1975, Emerg; April 8, 1977, Reg; January 16, 1992, Susp.	January 2, 1992	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-172 Filed 1-3-92; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subject in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State	County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California	Sacramento	Unincorporated Areas (Docket No. 7036).	August 7, 1991, August 14, 1991, *Sacramento Bee.*	Mr. Douglas M. Fraleigh, Director, Sacramento County Department of Public Works, 827 Seventh Street, room 304, Sacramento, California 95814.	July 25, 1991	060262
California	San Joaquin	City of Stockton (Docket No. 7035)	August 15, 1991, August 22, 1991, *The Stockton Record.*	The Honorable Joan Darrah, Mayor, City of Stockton, 425 North El Dorado Street, Stockton, California 95202.	August 14, 1991	060302
California	San Joaquin	Unincorporated Areas (Docket No. 7035).	August 15, 1991, August 22, 1991, *The Stockton Record.*	The Honorable George L. Barber, Chairman, San Joaquin County Board of Supervisors, 222 East Weber Avenue, room 701, Stockton, California 95201.	August 14, 1991	060299

State	County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Colorado	Arapahoe	City of Greenwood Village (Docket No. 7033).	July 25, 1991, August 1, 1991, *Villager*.	The Honorable Rollin Barnard, Mayor, City of Greenwood Village, 6060 South Quebec Street, Greenwood Village, Colorado 80111-4591.	July 15, 1991	080195
Connecticut	Fairfield (FEMA Docket No. 7021).	City of Norwalk	May 10, 1991, May 17, 1991, *The Norwalk News*.	The Honorable Frank Esposito, Mayor of the City of Norwalk, Fairfield County, 125 East Avenue, Norwalk, Connecticut 06851.	May 2, 1991	090012 C
Connecticut	Fairfield (FEMA Docket No. 7028).	City of Stamford	June 21, 1991, June 28, 1991, *The Advocate*.	The Honorable Thom Serrani, Mayor of the City of Stamford, Stamford Governmental Center, 888 Washington Boulevard, Stamford, Connecticut 06904-2152.	June 14, 1991	090015
Georgia	Cobb (Docket No. FEMA-7028).	City of Marietta	June 21, 1991, June 28, 1991, *Marietta Daily Journal*.	The Honorable Joe Mack Wilson, Mayor, City of Marietta, P.O. Box 609, Marietta, Georgia 30061.	June 7, 1991	130226
New York	Dutchess (FEMA Docket No. 7021).	Town of LaGrange	April 25, 1991, May 2, 1991, *The LaGrange Ledger*.	Mr. Arthur McCluskey, Town Supervisor, 120 Stringham Road, LaGrangeville, New York 12540-9412.	April 11, 1991	361011 B&C
Ohio	Greene (Docket No. FEMA-7028).	City of Fairborn	June 14, 1991, June 21, 1991, *The Fairborn Daily Herald*.	The Honorable Michael Hammond, City Manager, City of Fairborn, 44 W. Hebble Avenue, Fairborn, Ohio 45324-4999.	June 4, 1991	390193
Tennessee	Sumner (Docket No. FEMA-7033).	City of Gallatin and City of Hendersonville.	August 9, 1991, August 16, 1991, *News Examiner*.	The Honorable Bethel Brown, County Executive, Sumner County, 355 North Belvedere Drive, Gallatin, Tennessee 37066.	July 26, 1991	470348
Virginia	Independent City (FEMA Docket No. 7021).	City of Falls Church	May 1, 1991, May 8, 1991, *The Fairfax Journal*.	The Honorable Dale Warren Dover, Mayor of the City of Falls Church, Harry E. Wells Building, 300 Park Avenue, Falls Church, Virginia 22046.	April 23, 1991	510054 B
Wisconsin	Calumet	City of Chilton (Docket No. FEMA-7021).	April 18, 1991, April 25, 1991, *Chilton Times Journal*.	The Honorable John Ronk, Mayor, City of Chilton, 42 School Street, P.O. Box 183, Chilton, Wisconsin 53014.	April 5, 1991	550037
Wisconsin	Calumet	Unincorporated Areas (Docket No. FEMA-7021).	April 18, 1991, April 25, 1991, *Chilton Times Journal*.	The Honorable John Keuler, Administrative Coordinator, Calumet County, 206 Court Street, Chilton, Wisconsin 53014.	April 5, 1991	550035

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-165 Filed 1-3-92; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket Number FEMA-7038]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists communities where modification of the base (100-year) flood elevations is apppropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: These modified base flood elevations are currently in effect and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for te floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas	Benton	City of Centerton	October 28, 1991, November 4, 1991, *The Daily Record.*	The Honorable Sherman Kinyon, Mayor of the City of Centerton, Benton County, P.O. Box 208, Centerton, Arkansas 72719.	October 18, 1991	050399
California	Santa Barbara	Unincorporated Areas	October 24, 1991, October 31, 1991, *Santa Barbara News-Press.*	The Honorable Diane Owens, Chairperson, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, California 93101.	October 18, 1991	060331
Connecticut	Hartford	City of Bristol	October 29, 1991, November 5, 1991, *Bristol Press.*	The Honorable William T. Stortz, Mayor of the City of Bristol, Hartford County, 111 North Main, Bristol, Connecticut 06010.	October 15, 1991	090023
Illinois	Cook	Village of Hoffman Estates.	November 8, 1991, November 15, 1991, *The Daily Herald.*	The Honorable Michael J. O'Malley, Village President, Village of Hoffman Estates, 1200 North Gannon Drive, Hoffman Estates, Illinois 60196.	October 24, 1991	170107
Illinois	Lake	Village of Vernon Hills	April 18, 1991, April 25, 1991, *The Vernon Review.*	The Honorable Larry Laschen, Village Manager, Village of Vernon Hills, 290 Evergreen Drive, Vernon Hills, Illinois 60061.	April 5, 1991	170394

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois	Madison	City of Granite City	November 14, 1991, November 21, 1991, *Granite City Press Record.*	The Honorable Von Dee Cruse, Mayor, City of Granite City, 2060 Edison Avenue, Granite City, Illinois 62040.	October 31, 1991	170443
Indiana	Hamilton	City of Carmel	November 22, 1991, November 29, 1991, *Carmel Daily Ledger.*	The Honorable Dottie Hancock, Mayor, City of Carmel, 1 Civic Square, Carmel, Indiana 46032.	November 8, 1991	180081
Mississippi	Madison	City of Ridgeland	November 28, 1991, December 5, 1991, *Madison County Journal.*	The Honorable Gene F. McGee, Mayor, City of Ridgeland, 500 Highway 51 South, P.O. Box 217, Ridgeland, Mississippi 39158.	November 13, 1991	280110
Ohio	Medina	City of Brunswick	October 31, 1991, November 7, 1991, *The Medina County Gazette.*	The Honorable Judith Beadell-Rapp, Mayor, City of Brunswick, City Hall, 4095 Center Road, Brunswick, Ohio 44212.	October 8, 1991	390380
Ohio	Medina	City of Brunswick	October 24, 1991, October 31, 1991, *The Medina County Gazette.*	The Honorable Judith Beadell-Rapp, Mayor, City of Brunswick, City Hall, 4095 Center Road, Brunswick, Ohio 44212.	October 8, 1991	390380
Tennessee	Shelby	City of Millington	November 13, 1991, November 20, 1991, *Millington Star.*	The Honorable George R. Harvell, Jr., Mayor, City of Millington, P.O. Box 247, Millington, Tennessee 38083.	October 31, 1991	470178
Texas	Travis	City of Austin	October 25, 1991, November 1, 1991, *Austin American-Statesman.*	The Honorable Ruth Todd, Mayor of the City of Austin, Travis County, P.O. Box 1088, Austin, Texas 78767.	October 16, 1991	480624 C

C.M. "Bud" Schauerte,
Administrator, Federal Insurance Administration.

[FR Doc. 92-166 Filed 1-3-92; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 28

[CGD 88-079]

RIN 2115-AD12

Commercial Fishing Industry Vessel Regulations; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations published on August 14, 1991 (56 FR 40364). That final rule related to the Coast Guard's issuance of regulations for documented or state numbered uninspected fishing, fish processing, and fish tender vessels to implement provisions of the Commercial Fishing Industry Vessel Safety Act of 1988. These regulations are intended to improve the overall safety of commercial fishing industry vessels.

EFFECTIVE DATE: September 15, 1991.

FOR FURTHER INFORMATION CONTACT: LCDR Ed McCauley, Merchant Vessel Inspection and Documentation Division, Fishing Vessel/Offshore Activities Branch (G-MVI-4), room 1405, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202)-267-2307.

SUPPLEMENTARY INFORMATION:

Background

These regulations apply to all U.S. commercial fishing industry vessels, whether existing before, or built or altered after September 15, 1991, and provides requirements for their equipment, design, and operations. Additional equipment is required for documented vessels that operate beyond the Boundary Lines or that operate with more than 16 individuals on board. Design and construction requirements that apply to vessels built after or which undergo a major conversion completed after September 15, 1991, are also included, if those vessels operate with more than 16 individuals on board. Additionally, casualty and injury reporting requirements are included that apply to all underwriters of primary insurance for commercial fishing industry vessels, owners of commercial fishing industry vessels, and all employees injured on such vessels.

Paragraph (b) of § 28.500 is revised in order to clarify the requirements for vessels that undergo alterations to fishing or fish processing equipment in a manner different than had been accomplished previously. These vessels are considered to be "substantially altered". Therefore, they need only meet the subpart E requirements in § 28.501.

Paragraph (a) of § 28.580 is revised in order to clarify the Coast Guard's intent that U.S. commercial fishing industry vessels constructed before the effective date of the regulations be exempt from § 28.580(a). The Notice of Proposed Rulemaking (NPRM) published on April 19, 1990 (55 FR 14924) stated that § 28.580(a) would apply only to vessels constructed on or after the effective date of the regulations. In drafting the final rule, the Coast Guard inadvertently

deleted that provision thus making § 28.580(a) apply to vessels that had undergone major conversions or alterations as well. This was not the Coast Guard's intent, considering the difficulties existing vessels would have retrofitting bulkheads in order to meet the survival conditions specified.

Need for Correction

As published, the final regulations contain errors which may prove misleading or are unclear in their intent and need further clarification.

List of Subjects in 46 CFR Part 28

Fire prevention, Fishing vessels, Incorporation by reference, Lifesaving equipment, Main and auxiliary machinery, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Seamen, and Stability.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

1. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4506, 6104, 10603; 49 U.S.C. App. 1804; 49 CFR 1.46.

2. Paragraph (b) of § 28.500 is revised to read as follows:

§ 28.500 Applicability.

* * * * *

(b) Undergoes alterations to the fishing or processing equipment for the purpose of catching, landing, or processing fish in a manner different than has previously been accomplished on the vessel—these vessels need only comply with § 28.501 of this subpart; or

* * * * *

3. Paragraph (a) of § 28.580 is revised to read as follows:

§ 28.580 Unintentional flooding.

(a) *Applicability.* Except for an open boat that operates on protected waters and as provided by paragraph (i) of this section, each vessel built on or after September 15, 1991 must comply with the requirements of this section.

* * * * *

Dated: December 27, 1991.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92-157 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-14-M

Research and Special Programs Administration

49 CFR Parts 107 and 180

[Docket Nos. HM-183, 183A; Amdt. Nos. 107-20, 180-2]

RIN 2137-AA42

Requirements for Cargo Tanks; Compliance Date

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; revision of compliance date.

SUMMARY: RSPA is delaying the compliance date for a provision contained in 49 CFR 107.503(b)(1) and (c) that persons who are engaged in the manufacture and repair of MC 306, MC 307 and MC 312 cargo tank motor vehicles must submit a copy of their American Society of Mechanical Engineers (ASME) "U" or National Board of Boiler and Pressure Vessel Inspectors (National Board) "R" Certificate of Authorization to RSPA before December 31, 1991. RSPA is delaying the compliance date to June 30, 1992. This action is being taken to allow the National Board, which performs the inspection reviews, additional time to process its backlog of authorization requests.

EFFECTIVE DATE: Effective December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Charles Hochman, (202) 366-4545, Office of Hazardous Materials Technology, or Hattie Mitchell, (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: The Hazardous Materials Regulations (49 CFR parts 171-180) require that any person engaged in the manufacture, assembly or repair of DOT specification cargo tanks or cargo tank motor vehicles, and cargo tanks manufactured under exemption must hold a current ASME "U" or National Board "R" Certificate of Authorization. Sections 107.504(b)(1) and (c) require manufacturers (including certain assemblers) and repairers of MC 306, MC 307 and MC 312 cargo tank motor vehicles to submit a copy of their Certificate of Authorization to RSPA before December 31, 1991. Similarly, § 180.413(a) provides that any repair, modification, stretching or rebarrelling on any low pressure MC series cargo tank must be performed by a holder of an ASME "U" stamp or a National Board "R" stamp after January 1, 1992.

RSPA has received several written and telephonic requests to delay the December 31, 1991 compliance date for RSPA to receive these ASME or National Board Certificates of Authorization. The ASME and the National Board both have established procedures for inspection and certification of facilities engaged in the construction and repair of cargo tanks. Prior to issuance of both types of certificates, the National Board conducts a review of the manufacturer's or repairer's facility and witnesses a demonstration of the operator's quality control system and fabrication or repair procedures. Because of a substantial increase in the number of these authorization requests, the National Board is experiencing scheduling delays of 3-4 months in some states. Therefore, RSPA is delaying the date for submission of these ASME and National Board Certificates of Authorization from December 31, 1991, to June 30, 1992.

Because the amendments adopted herein impose no new regulatory burden on any person, notice and public procedure are unnecessary. For these same reasons, these amendments are being made effective without the usual 30-day delay following publication.

Administrative Notices

A. Executive Order 12291

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. However, it is a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11034). This rule does not require a Regulatory Impact Analysis, or an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) This final rule does not impose additional requirements and has the net result of reducing costs imposed under the final rule published in the **Federal Register** on June 12, 1989 (54 FR 38233) without reducing safety. The original regulatory evaluation of the final rule was not modified because this final rule does not impose additional requirements and does not make substantive changes to the final rule. That document is available for review in the docket.

B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effect on the States, on the current

Federal-State relationship, or the current distribution of power and responsibilities among levels of government. Thus this final rule contains no policies that have Federalism implications, as defined in Executive Order 12612, and no Federalism Assessment is required.

C. Impact on Small Entities

Based on available information, I certify that the changes in this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A regulatory flexibility analysis prepared for the October 2, 1991 final rule is available for review in the docket.

D. Paperwork Reduction Act

This amendment imposes no changes to the information collection and recordkeeping requirements contained in the June 12, 1989 final rule, which was approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35.

E. Regulatory Information Number (RIN)

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous material transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, chapter I, subchapters B and C of the Code of Federal Regulations, are amended as set forth below.

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1802, 1806, 1808–1811; 49 CFR 1.45 and 1.53 and app. A of part 1, Public Law 89–670 (49 U.S.C. 1653(d), 1655).

§ 107.503 [Amended]

2. In § 107.503, in paragraphs (b)(1) and (c), the date "December 31, 1991" is revised to read "June 30, 1992" both places it appears.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

3. The authority citation for part 180 continues to read as follows:

Authority: 49 App. U.S.C. 1803; 49 CFR part 1.

§ 180.413 [Amended]

4. In § 180.413, in the last sentence of the introductory text to paragraph (a), the date "January 1, 1992" is revised to read "June 30, 1992".

Issued in Washington, DC on December 30, 1991, under authority delegated in 49 CFR part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91–31332 Filed 12–31–91; 11:35 am]

BILLING CODE 4910–60–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 910102–1312]

RIN 0648–AD01

Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule under authority of the Atlantic Tunas Convention Act (ATCA) to: (1) Require specified amounts of other species to be landed as a condition for landing an incidental bycatch of Atlantic bluefin tuna (bluefin) in the southern longline fishery; (2) prohibit retention of Atlantic bluefin tuna harvested from the Gulf of Mexico, except for vessels permitted in the Incidental Catch category; and (3) make other technical revisions to the regulations.

This action is necessary to prevent a directed fishery for Atlantic bluefin tuna in the Gulf of Mexico and to enhance enforcement of the regulations. The intent of this action is to ensure that the United States fulfills its obligations to conserve and manage the Atlantic bluefin tuna resource in accordance with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

EFFECTIVE DATE: December 31, 1991.

ADDRESSES: Copies of the environmental assessment and final regulatory flexibility analysis referred to in this rule, as well as other previously published reports, are available from Richard Roe, Regional Director, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, (508) 281–9324 or Hannah Goodale, (508) 281–9101.

SUPPLEMENTARY INFORMATION: On March 11, 1991, NMFS published a proposed rule at 56 FR 10227 to amend the regulations governing the Atlantic bluefin tuna fishery (50 CFR part 285). The rule was intended to prevent a directed fishery for Atlantic bluefin tuna in the Gulf of Mexico (Gulf) and improve management of the angling sector. The rule also proposed technical revisions to improve the effectiveness of existing regulations. This final rule implements the measures concerning the Gulf fishery, which are necessary before the January commencement of the Gulf fishery, and the technical revisions. A technical modification to allow the Regional Director to specify a date when a bluefin permit expires was implemented in a separate final rule (56 FR 50061). The remaining proposed measures concerning the angling sector are still under consideration by NMFS and are not implemented by this rule.

Public comment on the proposed rule was initially invited through April 25, 1991. NMFS also held a series of public hearings in New England, Mid-Atlantic and Gulf states. In response to concerns expressed at the public hearings, the comment period was reopened until May 10, 1991 (56 FR 20183, May 2, 1991). In addition, NMFS also invited comment on a request from fishermen in North Carolina for future rulemaking to change the commencement date of the General category season.

Background

This final rule is not intended to present a new management strategy for Atlantic bluefin tuna. The Fishery Conservation Amendments of 1990 (Pub. L. 101–627) will bring all tunas under Magnuson Act authority on January 1, 1992, and NMFS intends to undertake a more comprehensive rulemaking after that date. This final rule is intended to address specific concerns and ensure that the United States fulfills its current obligations to ICCAT.

ICCAT prohibits directed fishing on the spawning stock of Atlantic bluefin tuna in the Gulf. The United States currently implements this prohibition by restricting domestic longliners operating south of 36° N. latitude to a bycatch of two bluefin per trip. The lack of a requirement that bluefin be landed in conjunction with other species and the short distance from port to the fishing grounds make it possible for vessels to direct their fishing on bluefin despite the trip limit. This final rule requires longline vessels operating south of 36° N. latitude to land, offload, and sell at least 2,500 lbs (1,134 kg) of other species as a condition for landing a maximum of one bluefin tuna. This rule also modifies the existing regulation concerning bycatch in the longline fishery north of 36° N. latitude to require that the catch be offloaded after each trip and recorded on a dealer weighout. The purpose of this requirement is to facilitate enforcement and to ensure that the intent of this rule is not circumvented by a vessel's storing 2,500 lbs (1,134 kg) of unmarketable fish on board or by landing and discarding them to meet the requirement.

This final rule also revises the regulation to prohibit the retention of bluefin tuna from the Gulf by any vessels other than those permitted in the Incidental Catch categories. These measures are expected to discourage directed fishing in the Gulf and to have a beneficial impact on the stock. These measures do not change the allocation for total longline bycatch or any other allocations.

Technical Modifications

This rule makes several modifications to the existing regulations to improve enforceability and administration of the management program. These modifications are described below.

A definition of the term "fishing record" is added to mean all records of navigation and operations, as well as all records of catching, harvesting, transporting, landing, purchase or sale. This clarifies the regulations to allow the inspection of more than the normal fishing logbook. This change will facilitate enforcement of the existing regulations.

The definition of "Regional Director" is revised to reflect the current address.

Section 285.3(b) is amended by adding the words "possessed or landed" after the words "taken or retained" to give this prohibition a broader application. Section 285.3(f) is amended to require young school, school or medium tuna to be landed in whole or eviscerated form only, and paragraph (g) is added to enhance enforcement against imports that were harvested contrary to another country's regulations.

A definition of "eviscerated" is added to mean removal of alimentary organs only. Presently, fishermen are allowed to remove the head and gills of fish of any size. The lack of a uniform heading practice results in measurements that may not accurately reflect the overall length of the fish, and makes proper species identification difficult in smaller fish. This information is important for fishery management and enforcement purposes. To facilitate proper identification, the removal of the head or gills will be prohibited for young school, school or medium size categories (smaller than 77 inches or 196 cm fork length) since gill-raker count is one of the only accurate means of species differentiation in smaller fish. In response to concerns about meat storage of young school, school and medium fish, the entrails may be removed and the spinal cord destroyed by insertion of a metal spike.

The head and gills may be removed from giant tuna (77 inches, 196 cm fork length or greater) provided that the total length is recorded prior to heading and reported to the dealer. Heading of fish is permitted for giant bluefin tuna because neither yellowfin tuna nor bigeye tuna reaches the 77-inch (196 cm) length. For enforcement purposes, a headed fish with a pectoral fin to fork of tail length of 57 inches (145 cm) or greater will be considered a giant Atlantic bluefin tuna.

This final rule also authorizes the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) in § 285.31(c), to rescind the prohibition on heading by a publication of a notice in the **Federal Register** in the event that documented evidence is produced that would provide an alternate definitive method of accurate field identification and provided that fishermen record total lengths prior to heading and report them to the dealer.

Section 285.21(c) is revised to allow the Regional Director to change a vessel's permit category after May 15 if a vessel has been inactive in the fishery or in instances where an error was made during the application procedure. A vessel that has never landed an Atlantic bluefin tuna is considered to be inactive in the fishery. The intent of the existing regulation, which does not allow permit category changes after May 15, was to prevent vessels from fishing in two permitted quota categories in the same year. The change implemented by this final rule provides some administrative latitude without altering the intent or effectiveness of this section.

Section 285.23(g) is revised by removing the phrase "in the Gulf of Mexico". The intent of this section is to allow the incidental harvest of bluefin caught in traditional rod and reel fisheries. Historical fisheries engaged in by U.S. fishermen, such as those in the Bahamas, Cayman Islands, etc., were inadvertently excluded. This is corrected by this final rule by removing the geographical specification.

Section 285.25(c) is revised to reflect the current telephone number for purse seine gear inspection.

Section 285.28(a) is revised to clarify the requirement that all dealers who purchase or receive bluefin tuna must obtain a permit. This clarification is to enhance enforcement of the quota monitoring system. Sections 285.29(a) and (b) are revised to clarify the requirement that the dealer reports must be postmarked within the times specified in these paragraphs. Section 285.29(b) is further revised to clarify the existing requirement in the regulation that dealers must include imported Atlantic bluefin tuna on their weekly report forms. Section 285.29(e) is revised to include the current phone number to be called for the inspection of a purse seine vessel.

Section 285.30 is revised by removing the requirement that the metal tag be affixed to the outside of a container holding a medium or giant Atlantic bluefin tuna. Some of these fish are cut into pieces before they are exported. Therefore, it is impossible for the tag to accompany each boxed piece. A new requirement is added that tag numbers must be written on any documents accompanying bluefin tuna shipments. The requirement that the tag number be marked on the outside of these containers remains unchanged. This section is also revised to reflect current phone numbers and to allow the Regional Director to designate a person other than a NMFS agent to tag a medium or giant bluefin.

Sections 285.31(a)(1)(2) and (5) are revised by adding the words "possess or land" after the words "[F]ish for". This broadens the application of these sections to facilitate enforcement.

Among the technical improvements discussed in the proposed rule was a modification to § 285.21(e) that would allow the Regional Director to specify a date when a permit expires. That modification was implemented separately in a final rule published on October 3, 1991 (56 FR 50061), due to the need for sufficient lead time to allow for permit renewal before commencement of the 1992 fishing season.

Discussion of Public Comments

NMFS received a total of 167 written comments during the public comment period. Comments were submitted by congressional representatives, a state assembly, state legislators, a township council, state wildlife agencies, fishing associations, marine research and conservation organizations, charter boat owners and operators, recreational fishermen, and other individuals. Many of the comments exceeded the scope of this final rulemaking. Only the portions that pertain to the measures implemented by this final rule are addressed below.

General Comments

Comment: Several commenters expressed concern that the proposed actions are not consistent with ICCAT intentions, particularly as they apply to spawning tuna; some felt that the proposed actions fall short of those required for conservation and management, while others felt that the actions will result in underharvest of the ICCAT quota.

Response: The primary conservation measure for Atlantic bluefin tuna is a quota established by ICCAT. NMFS' management measures allow U.S. fisheries to operate within the ICCAT constraint. Since the measures implemented by this final rule are intended to improve quota compliance and enforceability, NMFS believes that they will further ICCAT's conservation goals. The measure pertaining to the southern longline fishery is specifically designed to comply with the ICCAT recommendation prohibiting directed fishing in the Gulf of Mexico.

Comment: Several commenters expressed concern that the allocation established by ICCAT for scientific monitoring purposes is too high. They cited past recommendations made by the ICCAT Scientific Committee on Research and Statistics and by NMFS that the number of bluefin killed must be held as near as possible to the minimum needed to index population abundance. One commenter expressed concern that the ICCAT quotas are not biologically sound, but are economically determined, and that catch levels are too high.

Response: NMFS' current bluefin tuna management is consistent with ICCAT quotas, which are established to further scientific monitoring. Under ATCA, NMFS management measures must be consistent with final ICCAT recommendations and the U.S. quotas cannot legally be more restrictive than the ICCAT quotas.

Comment: Several commenters expressed concern that discard mortality estimates are not charged against the quotas. Several proposed that bluefin currently discarded dead should be landed and donated to food banks.

Response: NMFS believes that discard mortality is an important concern that should be addressed. Research is needed on gear modification, seasonal and/or area closures, and other techniques to minimize discarding any bycatch. NMFS will pursue this research as resources allow. Estimates of the amount of discard from U.S. fisheries are reported to ICCAT each year. These data are considered by scientists and managers in formulating recommended measures.

NMFS agrees that discard is wasteful, but believes that allowing fish to be landed and donated to a food bank would complicate enforcement and would be likely to increase mortality. Instead, NMFS believes that methods of preventing incidental catch should be sought.

Comment: Several commenters expressed hope that there will be significant changes in management methods when the Secretary of Commerce (Secretary) begins to manage bluefin under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) in January 1992. They felt that the measures contained in this rule will not be effective in halting a decline in the bluefin population. They proposed re-examination of the overall management strategy for bluefin and made specific management proposals. Several suggested that NMFS should organize a Plan Development Team and/or begin work on the fishery management plan (FMP) immediately.

Response: The specific management proposals suggested by the commenters exceed the scope of this rulemaking and will not be responded to here. However, many of the points raised are constructive and are under consideration for the measures previously proposed but not yet implemented. The purpose of this rulemaking is to comply with ICCAT commitments, which ensures that the United States is in the best position to negotiate future agreements.

Comment: One fishing association stated that it hopes these are the last tuna regulations developed in a "secretive fashion."

Response: NMFS does not believe these regulations were developed in a secretive fashion. The statutory procedures for Federal rulemaking have been followed, including publication of a proposed rule in the **Federal Register** and a period for public comment. In addition, NMFS extended the initial comment period, sent notices regarding the rulemaking to approximately 30,000 permit holders, and held a series of pubic hearings along the eastern seaboard and in the Gulf states. NMFS believes that there were extensive opportunities for input to this rulemaking and, in fact, received 167 written comments.

Comment: Several commenters questioned the adequacy of the data available to NMFS concerning bluefin tuna. They expressed specific concern with the data used to evaluate the economic impacts of regulations and the catch levels, particularly in the recreational fishery. Several commenters proposed that NMFS allocate increased resources to addressing data needs, and several state agencies and fishing organizations offered to cooperate in future data collection efforts.

Response: NMFS must use the best available information to monitor catch levels and ensure compliance with ICCAT quotas. Additional resources would be required to make significant improvements in the current data collection system; however, improvements are being made when possible. To improve economic information, for instance, NMFS recently initiated the collection of ex-vessel price information on mandatory dealer reports.

Comment: Several commenters expressed concern about the lack of enforcement of existing regulations. One expressed the belief that the most effective enforcement tool at the current time is peer pressure and a growing conservation ethic.

Response: Improving enforcement effectiveness is one of NOAA's current operational goals and NMFS does not debate that coverage could be improved. Recent efforts have been made to inform fishermen of the regulations and of the location of enforcement offices, should they require assistance. A pamphlet containing this information was widely distributed; a second edition will be produced to incorporate these changes made in this final rule and will be distributed to fishermen. Certain aspects of the existing regulations are revised by this rule to facilitate enforcement. For instance, a requirement to land bluefin (other than giants) with the head on, a definitive pectoral fin to fork of tail measurement, and other measures implemented by this final rule, are added to improve enforceability of the regulations.

Comment: Many commenters requested the reduction or elimination of the quota allocated to purse seiners.

Response: These comments are not relevant to this final rulemaking and will not be responded to here. This issue was addressed in the preamble to the rules published on June 11, 1982 (47 FR 25350), and June 17, 1983 (48 FR 27755).

Comment: Several commenters proposed that part or all of the fishery for Atlantic bluefin tuna be closed for a period of years in order to further stock rebuilding; some proposed a complete closure, some proposed closure of the Gulf of Mexico only, some proposed closure of the Gulf of Mexico during the spawning period, and some proposed a closure only of the giant bluefin fishery.

Response: The ATCA does not provide the authority to adopt management measures for Atlantic bluefin tuna that are more restrictive than those adopted by ICCAT; therefore, complete closure of the fishery is not currently an option. While it would be possible to close specific areas to fishing in order to further the conservation and management goals of ICCAT, NMFS employs fishing seasons and quotas to accomplish the same goal.

Comment: Several commenters expressed concern that efforts to control bluefin harvesting in the Gulf of Mexico will be ineffective unless Mexico is persuaded to join ICCAT. They expressed serious concern that Mexico is not an ICCAT signatory. One conservation organization expressed concern that the possibility exists for an over-the-side trade with Mexican vessels to develop or intensify in the Gulf under these regulations.

Response: Over-the-side between U.S.-owned or operated vessels is prohibited (§ 285.31 (a)). NMFS urges anyone with information or evidence of this practice to report it immediately to one of these offices: Northeast Region Enforcement (508–281–9239), or Southeast Region Enforcement (813–893–3145).

Comment: One commenter proposed that NMFS investigate fishery-independent methods of monitoring the population of bluefin.

Response: NMFS currently conducts a larval survey in the Gulf that provides information concerning bluefin tuna, but agrees that more fishery-independent information is needed. Fiscal constraints have prevented the agency from pursuing other methods, such as aerial surveys.

Southern Area Incidental Longline Fishery

Of the 43 comments received on this issue, 19 commenters favored the measure presented in the proposed rule and several stated that they believe it will reestablish the incidental nature of the bluefin catch in the Gulf of Mexico and stop the directed fishery that has developed. The remaining commenters opposed the proposed rule, some because they believe it is too restrictive and others because it is not restrictive enough.

Comment: One commenter believed that the regulation has disparate impacts in the northern and southern fishing areas; he suggested extending the 2-percent requirement (northern area) to the southern longline fishery as a remedy. Other commenters expressed similar concerns and several proposed that the portion of the rule that applies to the northern area should be rewritten to read "2 percent or one fish."

Response: NMFS does not believe that the northern and southern incidental fishing restrictions, although different, create a disparity. Both the 2-percent requirement in the north and the 2,500 lbs (1,134 kg) catch requirement for species other than bluefin tuna (directed catch) in the south require longline vessels to land a reasonable amount of directed catch as a requisite for an incidental take of one bluefin tuna. Since NMFS is unaware of any directed longline fishing for bluefin occurring in the northern area, a change has been sought only in the southern area where the problem is occurring. NMFS rejects the proposal to reword the requirement for the northern fishery because it may weaken a measure that seems to have been effective.

Comment: A conservation organization questioned the effectiveness of the regulation because it estimated that the 2,500 (1,134 kg) of directed catch can be easily obtained and felt that the regulation will not discourage a fishery directed on bluefin. It suggested that the minimum catch of allowed species be set at 15,000 lbs (6,804 kg).

Response: Comments received during public hearings and from the NMFS port statistics program indicate that 2,500 lbs (1,134 kg) is an appropriate threshold amount of directed catch for the southern area. Many smaller vessels are not capable of carrying 15,000 lbs (6,804 kg). Although 2,500 lbs (1,134 kg) may be easily obtained by the largest vessels, NMFS is seeking a threshold that can be applied to vessels of all sizes and not exclusively to large vessels.

Comment: Several commenters questioned the effectiveness of the rule in limiting directed fishing on bluefin because the bycatch of bluefin is much more valuable than the species making up the directed catch. They expressed concern that 2,500 lbs of shark or yellowfin tuna could be brought onto a vessel and sold at any price or dumped, since the bluefin is the valuable portion of the catch. Another proposed that language be inserted to require that the directed catch be "landed and offloaded" because of concern that boats might carry 2,500 lbs (1,134 kg) of shark or yellowfin tuna that is never offloaded.

Response: NMFS believes this is a legitimate concern and the language of the final rule has been revised to require that, in order to land one incidentally caught bluefin, at least 2,500 lbs (1,134 kg) of other directed species must be offloaded from the same trip, and documented as sold on the dealer weighout.

Comment: A state agency commented that the measures move in the right direction, but proposed that protective language be inserted to state that if NMFS monitoring shows there is no reduction in the mortality of giants then the spawning area shall be closed. They felt this would put fishermen on notice that such catches must be truly incidental.

Response: NMFS scientists believe that closure of certain spawning areas within the Gulf of Mexico is problematic because the location of the areas varies from year to year. Closing the entire Gulf of Mexico exceeds the scope of this rule.

Comment: Several fishermen and fishing organizations proposed that additional species be added to the list of those making up the 2500-lb (1,134/kg) directed catch since these species are often caught in the longline fishery. The species proposed were common dolphin or mahi-mahi, wahoo, albacore tuna, escalar or oil fish, and bigeye tuna.

Response: It is NMFS' intent that longline fishermen direct their fishing on species other than bluefin; therefore, it is both reasonable and consistent to include all other species in the 2,500-lb (1,143-kg) directed catch amount. NMFS will require that the directed catch amount is offloaded from the same trip and documented on the dealer weighout.

Comment: Several fishermen and a fishing organization proposed division of the incidental catch allocation into three equal portions for Gulf of Mexico, southern and northern Atlantic areas in order to prevent the entire incidental catch allocation from being used up early in the season by the gulf of Mexico fishery. They believed that this will reduce discards in the fisheries in the other areas. Another commenter proposed that the incidental tonnage allocation for the northern area should be between 33 and 50 percent. Those proposing new geographical allocations also proposed a change in the way

quotas are adjusted when catches exceed quota limits. They proposed that if a particular quota is exceeded, rather than reducing the quota in another category to ensure that the catch for the year remains within the overall U.S. quota limit, the adjustment should be made the following year to the allocation for the area that went over.

Response: NMFS believes that the requirement to land 2,500 lbs (1,134 kg) of other species will prevent the incidental allocation from being used up early in the season by directed fishing. Because a measure to subtract overages from a subsequent year's quota was not specifically addressed in the proposed rule and, therefore, the public has not had an opportunity to comment fully on it, NMFS intends to include this measure in a proposed rule in 1992.

Comment: One commenter opposed the proposed rule because it applies to an area greater than that required to protect spawning fish and felt it is unacceptable to put these restrictions on boats in areas other than the spawning area.

Response: There is no directed fishing permitted for bluefin tuna for U.S. longline vessels in any area. NMFS implemented longline restrictions to preclude expansion of the bluefin fishery by non-traditional fisheries. Although the longline restrictions serve to implement the ICCAT objective concerning the Gulf of Mexico spawning area, this is not the sole purpose; the purpose is to preclude directed fishing by U.S. longliners in any area at any time, and therefore, it is appropriate to apply the restriction to the entire southern area.

Comment: With the proposed reduction in the bycatch limit from two fish to one, a fishing organization requested more flexibility on the 24-hour reporting requirement. It also proposed making it acceptable to submit facsimile (fax) landings reports within 24 hours with associated paperwork to be postmarked within 48 hours.

Response: The Assistant Administrator is required to close this fishery when the quota is taken and relaxing this requirement would make it more difficult to carry out this responsibility. NMFS cannot consider relaxing the 24-hour reporting requirement, and has modified the final rule to clarify that the reports required of dealers must be postmarked within the times specified in the regulations.

Comment: One commenter proposed that the regulations be altered to require that dealer reports be faxed to NMFS to allow timely monitoring of quotas and reduce the likelihood of quota overages.

Response: NMFS does not believe that it is feasible to impose this requirement on the small dealers at this time.

Comment: One fishing organization expressed concern that the proposed rule is not adequate to prevent stock decline and proposed that the proposed measures be implemented for 2 years. If monitoring shows continued population decrease, the fishery should then be closed completely.

Response: The purpose of this rule is to bring the U.S. fishery into compliance with the ICCAT agreements to conserve and manage the resource by prohibiting a directed fishery in the Gulf of Mexico. It is important to manage fishery resources on a stock-wide basis and this can be effectively accomplished through ICCAT. For the United States to lead the way toward improving the health of the resource, it must first reconcile inconsistencies between the domestic and international programs. NMFS will continue to pursue improvements to the ICCAT conservation program.

Comment: Several fishermen and a fishing organization proposed that gear restrictions should be considered for the Gulf of Mexico longline fishery to reduce the incidental catch of giant bluefin. They proposed that requiring the use of 250–300 lb (113–136 kg) test leaders in the Gulf of Mexico between January 1 and June 1 would protect spawning fish because giant tuna would break off.

Response: NMFS believes that gear restrictions could be a future management option but that further study is required to define exact specifications and enforcement methods.

Comment: One commenter proposed an alternate management scheme to protect bluefin and other currently overfished large pelagic fishes that would require boats to return to port and land their catch once the daily quota for any single regulated species is reached (e.g., bluefin, swordfish, etc.). They believe that this is one of the only effective methods to reduce directed and incidental mortality short of a prohibition of longlining.

Response: There are no daily quotas for other tunas (e.g., yellowfin, bigeye, etc.) and swordfish caught by longline, or any other large pelagic species in the Atlantic or Gulf at this time. Implementing such a program would require amendments to fishery management plans for several species, which exceeds the scope of this rulemaking.

Comment: One commenter opposed the proposed rule and suggested instead closing the fishery during spawning and then allowing fishing without trip or daily limits. He proposed that mandatory daily reporting of all tuna caught, including reports from vessels still at sea, would prevent discard mortality and ensure that the fishery is closed when the quota is taken.

Response: NMFS's previous rejection of this alternative remains unchanged, because the location of the spawning areas within the Gulf of Mexico varies from year to year. As stated in response to the previous comment, ICCAT has identified the elimination of the directed bluefin fishery as a priority and NMFS rejects any proposal that would permit a directed bluefin fishery in the Gulf of Mexico or any expansion of directed bluefin fishing by non-traditional fisheries.

Comment: One commenter stated that, if longlining continues to be allowed during spawning season, it should only be permitted with observers aboard. Another commenter stated that observer coverage in the fishery should be enhanced to provide a more accurate estimate of discards.

Response: NMFS has implemented observer programs in some fisheries, but does not currently have such a program in the Southeast Region.

Comment: Many commenters proposed that the Gulf of Mexico be closed entirely to fishing in order to protect spawning bluefin. Several challenged the NMFS assertion that this option is not feasible because spawning areas vary from year to year. They felt that the area is not so large or variable that it could not be reasonably specified and closed. One stated that, given ICCAT's intent to protect spawning fish, NMFS should go further than the proposed regulations. Several proposed closing the entire Gulf to fishing during spawning; suggested dates for closure vary, but all fall within the period January-May. One commenter also proposed that to discourage illegal activity, the sale of bluefin tuna should be prohibited throughout the year in Gulf states. Several commenters questioned the effectiveness of the measures because they believe they will result in increased discard mortality.

Response: NMFS believes it is possible to conduct directed fishing on species other than bluefin, with only a limited amount of bluefin bycatch, provided that sufficient incentives are in place. NMFS believes the 2,500-lb (1,134-kg) threshold and one-fish bycatch allowance will force vessels to move away from bluefin. However, if this measure is demonstrated to be ineffective, NMFS will consider more stringent measures in a future rulemaking.

Comment: Four comments were received that specifically concerned the portion of the proposed rule that would prohibit retention of Atlantic bluefin tuna in the Gulf of Mexico except by vessels permitted in the Incidental Catch category. One commenter opposed the rule and wished the entire Gulf closed to all possession or retention of bluefin. Three commenters (an individual, a state fisheries agency, and a fishing club) favored the proposed rule. In addition, many of those who commented on the incidental catch regulation proposed a complete or partial halt to all catching of bluefin in the Gulf; they are construed to oppose this portion of the rulemaking since it allows incidental catches to occur.

Response: A complete closing of the Gulf of Mexico to those directed fisheries that legitimately have bycatch of bluefin tuna is responded to in the previous response.

Comments Concerning the Technical Modifications

Comment: Two individuals favored the measure prohibiting landing regulated tunas in other than whole or gutted (not gilled) form. Three individuals and five fishing organizations opposed it. Most of the commenters opposing this measure did so because heading improves quality and preservation and because it provides more storage area on vessels. One commenter was also concerned that the regulation would create fish waste disposal problems on shore. Commenters proposed that NMFS should continue to allow heading of regulated tunas and that the measurement from the pectoral fin to the fork, or from the nape to the caudal keel, should be used to estimate the total length of a headed fish. One commenter proposed that NMFS retain the existing guideline in the regulation for estimating the size of a headed fish. One commenter expressed concern that measurements of gilled and gutted fish actually overstate the length of the fish and will result in inaccurate data, and suggested that the measurement from the collar membrane to the tail is more accurate. One fishing club proposed adding a specific definition of "head-off length"—the measurement taken in a straight line along the middle of the lateral surface from pectoral girdle (collar) to the fork in the tail; they also proposed that language be added to make it a violation to mutilate the pectoral girdle. Two of the commenters proposed that instead of prohibiting the removal of the head, it should be required that all fish be measured before heading and the length reported at the point of sale.

Response: The reasons for prohibiting the heading and gilling of school and medium tunas, i.e., accurate measurements and field identification, are outlined under "Technical Modifications" above. NMFS agrees, however, that if fishermen will measure tunas before they are headed and provide the lengths to the dealers for reporting to NMFS, this removes one reason for the prohibition. However, this does not address the problem of field identification of small tuna. Therefore, until another scientifically documented identification method is found, this requirement remains in effect for regulated tunas less than 77 inches (196 cm).

Comment: One fishing club opposed the heading prohibition; however, the club requested that, if NMFS proceeds, the final rule be changed to allow the use of a rod to destroy the spinal cord (leaving a hole in the head) because this improves the quality of the meat.

Response: NMFS has no problem with this and has modified the final rule to allow the spinal cord to be destroyed.

Comment: One fishing club opposed the application of the heading prohibition to other species of tuna. They felt that only three ways exist to identify tuna species accurately (gill-raker count, examination of liver, examination of body cavity) and the proposed rule would make it difficult to use any of the three.

Response: The only known field method to distinguish between small tunas is by gill-raker count (examination of the livers is impractical). The requirement to leave the head on the fish will also require gill rakers to remain intact.

Comment: Three individuals opposed a modification to the regulations to allow changes to be made in permit categories after May 15.

Response: NMFS believes it should have the administrative latitude to correct mistakes that occur in the permitting process, which is the reason for this measure.

Comment: Four individuals were in favor of the proposal to allow incidental rod and reel catch to be extended to the traditional fishing grounds in the Bahamas and Cayman Islands. Two fishing organizations opposed it until these nations become members of ICCAT. One fishing organization expressed concern that this rule may impact the U.S. quota and believed that any reduction in the U.S. quota as a result of this rule is unacceptable.

Response: This revision will allow the incidental harvest of giant bluefin caught by U.S. fishermen in traditional rod and reel fisheries in areas such as the Bahamas, Cayman Islands, etc. U.S. regulations provide an established allocation of 5.4 mt of quota for this fishery that was formerly limited to the Gulf of Mexico. This quota has never been fully harvested and, therefore, is expected to be sufficient for the extended area without any impact on other quotas.

Comment: Four commenters supported the extension of dealer permitting requirements. One commenter requested that the requirement be expanded to cover all purchasers of tuna, including direct buyers such as restaurants.

Response: NMFS will implement the measure as proposed. The regulations already require that all direct buyers, including restaurants, obtain permits.

Comment: A fishing club supported the proposal allowing the Regional Director to designate a person other than a NMFS enforcement agent to tag medium and giant bluefin tuna. The club believed this measure will improve information about unsold mediums and giants that may be lost to the database due to the difficulties in getting a NMFS agent to tag the fish.

Response: NMFS is implementing this suggested provision through this final rule; the Regional Director will have the authority to designate individuals in appropriate locations for the delegation of tagging authority, as needed.

Comment: One related comment was received from a state fisheries agency that would like all fish to be tagged if they are sold. That agency believed that this measure would assist in the collection of data concerning the smaller fish that are sold.

Response: Currently, NMFS does not require school-size bluefin that are sold to be tagged; however, dealers must report them to NMFS nonetheless. NMFS does not believe tagging is necessary because small fish are used in local markets and not transported overseas and, therefore, do not require the additional tracking ability that tagging provides for larger fish. However, tagging school-size fish may be proposed in future rulemakings if this tracking ability becomes necessary.

Comment: Two commenters expressed support for all of the proposed "technical" revisions. A fishing organization proposed the addition of language in § 285.31, requiring enforcement officers to identity themselves to the captains and crew of a vessel before boarding.

Response: NMFS enforcement agents followed specified procedures in carrying out investigative and enforcement activities, and it is not necessary to specify these procedures in the regulations that apply to the Atlantic bluefin tuna fishery.

Comments Concerning a Request for Rulemaking

In addition to the proposed rule published March 11, 1991 (56 FR 10227), NMFS sought comment on May 2, 1991 (56 FR 20183), on a request from fishermen in North Carolina to have a future rulemaking to change the commencement date of the General category season for giant bluefin tuna from June 1 to January 1, thus opening the fishery to a new area off North Carolina.

Comment: Four commenters supported this proposal and six opposed it. One of the supporters pointed out that the General category quota has not been taken for several years. Several of the opponents believed that it is inappropriate to expand the bluefin fishery, particularly when more control is needed in the fisheries that already exist.

Response: NMFS agrees that opening the bluefin tuna fishery to non-traditional areas is contrary to sound conservation and management at this time, unless the expansion is counter-weighted by an equivalent reduction in another sector. For example, the rebuilding program emphasizes protection of juvenile bluefin; therefore, a proposal to allow giant bluefin to be harvested instead of small bluefin off North Carolina is an action NMFS would want to consider. Therefore, this proposal may be included in the forthcoming comprehensive rulemaking.

Changes From the Proposed Rule

The proposed rule would have allowed domestic longliners operating south of 36° N. latitude to land a bycatch of one bluefin tuna per trip only if they landed at least 2,500 lbs (1,134 kg) or more of yellowfin tuna, swordfish and shark on the same trip. The final rule has been modified to allow all species other than bluefin to be counted toward the 2,500 lbs (1,134 kg) provided that all species are offloaded after each trip and are recorded as sold on a dealer weigh-out. This was done in response to requests to expand the list of species to be included in the 2,500-lb (1,143-kg) threshold catch, and in consideration of concerns expressed about reductions in swordfish landings due to recent regulation changes affecting that fishery.

In response to comments on the proposed rule for the southern incidental longline fishery, a disparity in the wording of the regulations for the southern and northern fisheries was pointed out. To remedy this disparity, the final rule modifies the regulations for allowable incidental bluefin in the northern longline fishery to require that the vessel catch be landed and documented on a dealer weighout as sold.

In response to comments received concerning the proposed measure to prohibit removal of the head, the final rule was modified. In order to facilitate proper identification the removal of the head, fins or gills will be prohibited for young school, school, or medium size categories (smaller than 77 inches (196-cm) total fork length, measured from the snout to the fork of the tail) since gill-raker count is currently the only practical means of species differentiation in smaller fish. In response to concerns about meat storage of fish in the absence of heading, the alimentary organs may be removed and the spinal cord destroyed by insertion of a metal spike.

The final rule has been modified to allow the removal of heads and gills from giant bluefin tuna (77 inches (196 cm) total fork length or greater), provided that the total length is recorded prior to heading and reported to the dealer. Heading of fish is permitted for giant bluefin tuna because neither yellowfin tuna nor bigeye tuna reach the 77-inch (196-cm) length. For enforcement purposes, a headed fish with a pectoral fin to fork length, (measured from the dorsal insertion of the pectoral fin to the fork of the tail) of 57 inches (145 cm) or greater will be considered a giant Atlantic bluefin tuna.

Section 285.31(c) has also been added to enable the Assistant Administrator to rescind the prohibition on heading by a notice action in the event that another scientifically documented and enforceable method for identifying tunas is found.

Among the technical improvements in the proposed rule was a modification to § 285.21(e) that would allow the Regional Director to specify a date when a permit expires. That modification was implemented separately in a final rule published on October 3, 1991 (56 FR 50061), due to the need for sufficient lead time to allow for permit renewal before commencement of the 1992 fishing season. Therefore, that provision is not included in this final rule.

This final rule also modified § 285.29 (a) and (b) of the rule to clarify that the reports required by these paragraphs must be postmarked within the times specified therein.

Classification

An environmental assessment (EA) was prepared in 1983 to implement the ICCAT recommendations of 1982. The EA concluded that there would be no additional significant environmental impacts resulting from the action that were not addressed in the Environmental Impact Statements published in 1980 and 1982. This rule does not alter the scope or intent of those regulations. Copies of the EA may be obtained from the Regional Director (see **ADDRESSES**).

The Assistant Administrator has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. A summary of the reasons for this certification was published at 47 FR 10227 (March 11, 1991). As a result, a regulatory flexibility analysis was not prepared. All of the vessels operating in the Atlantic bluefin tuna fishery are considered small entities. These measures do not reduce the total amount of bluefin tuna allocated for harvest by U.S. fishermen and are not expected to result in under-harvesting of any of the quotas established for bluefin tuna. The impact of the measure specifying the amount of other species to be landed in conjunction with incidental bycatch of bluefin in the southern longline fishery will be that income previously derived from the illicit directed fishery for Atlantic bluefin tuna in the Gulf of Mexico will be redirected to vessels that legitimately land bluefin incidental to other species. This is consistent with the original intent of the rule.

The Assistant Administrator finds, pursuant to the Administrative Procedure Act (APA) (5 U.S.C. 553(d)(3)), for good cause that it is impracticable to delay for 30 days the effective date of this final rule. Because the Gulf longline fishery begins on January 1, this final rule must take effect on December 31, 1991, to ensure United

States compliance with its treaty obligation.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act and approved by the Office of Management and Budget. Section 285.21(c) makes a minor revision to the requirement for vessel permits (OMB Control Number 0648-0202). The reporting burden for permit applications is estimated to average 30 minutes for initial permits and 15 minutes for renewals. Section 285.23 is slightly revised to allow incidental rod and reel harvest in areas outside the Gulf of Mexico. Such harvests must be reported and made available for inspection and attachment of a metal tag within 24 hours of landing. The reporting burden is estimated to average 2 minutes per response (OMB Control Number 0648-0202). Section 285.25 is revised to reflect new telephone numbers to call to request a purse seine vessel inspection 24 hours prior to offloading. The reporting burden is estimated to be 5 minutes per request (OMB Control Number 0648-0202). Section 285.28(a) is revised to include importers of bluefin and thus requires their compliance with dealer reporting requirements. The reporting burden for dealer reports (Section 285. 29 (a) and (b)) is estimated to average 2 minutes per report (OMB Control Number 0640-0239). Section 285.29(e), as well as § 285.30, are revised to reflect new telephone numbers to call to request offloading inspections for buyboats and to request inspection and tagging of unsold medium and giant bluefin. The reporting burden is estimated to be 2 minutes for each request (OMB Control Number 0648-0202). These burden estimates include 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 these burden estimates or any other aspect of these collections-of-information to the Office of Fisheries Conservation and Management, 1335 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20235, Attention: NOAA Desk Officer.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: December 30, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 285 is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. Section 285.2 is amended by adding, in alphabetical order, definitions of "eviscerated" and "fishing record" and by revising paragraph (a) of the definition of "Regional Director" to read as follows:

§ 285.2 Definitions.

* * * * *

Eviscerated means removal of the alimentary organs only.

* * * * *

Fishing record means all records of navigation and operations, as well as all records of catching, harvesting, transporting, landing, purchase or sale.

* * * * *

Regional Director means

(a) For purposes of Atlantic bluefin tuna, the Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-3799; and

* * * * *

3. Section 285.3 is amended by revising paragraphs (b) and (f) and by adding a new paragraph (g) to read as follows:

§ 285.3 Prohibitions.

* * * * *

(b) For any person to land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish that the person knows, or should have known, was taken, retained, possessed, or landed contrary to this part, without regard to the citizenship of the person or registry of the fishing vessel that harvested the fish.

* * * * *

(f) For any person or vessel subject to the jurisdiction of the United States to land any tuna other than giant Atlantic bluefin tuna in forms other than whole or eviscerated, or to possess such bluefin tuna for commercial purposes in forms other than whole or eviscerated unless such tuna has been prepared for immediate packing in a sealed container for shipment or transport. A metal spike may be inserted into the spinal column, leaving a hole in the head of the fish, in order to destroy the spinal cord and enhance meat preservation and quality. In the case of giant Atlantic bluefin tuna, it is unlawful for any person or vessel subject to the jurisdiction of the United States to land any tuna in forms other than round, eviscerated or with the head removed.

(g) For any person subject to the jurisdiction of the United States to land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any regulated species that was harvested, retained, or possessed in a manner contrary to the regulations of another country.

4. Section 285.21 is amended by revising paragraph (c) to read as follows:

§ 285.21 Vessel permits.

* * * * *

(c) *Application procedure.* A vessel owner applying for an Atlantic bluefin tuna permit under this section must submit a completed permit application signed by the owner on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The application must include the name and address of the vessel owner, the name of the vessel, the port where the vessel is docked, the official State registration or U.S. Coast Guard documentation number, the tonnage if known, the length of the vessel, the area to be fished, and the category of the permit. Except for purse seine vessels, an owner may change the category of the vessel's permit by notifying the Regional Director in writing before May 15. After May 15, the vessel's permit category may not be changed for the remainder of the calendar year regardless of any change in the vessel's ownership, unless the vessel never had recorded landings of Atlantic bluefin tuna, or unless there is sufficient evidence for the Regional Director to determine that an error involving contradictory information was made on the application.

* * * * *

5. Section 285.23 is amended by revising paragraphs (f)(1), (f)(2) and (g) to read as follows:

§ 285.23 Incidental catch.

* * * * *

(f) * * *

(1) South of 36°00′ N. latitude, one bluefin per vessel per trip may be landed provided that at least 2,500 lbs (1,134 kg) of species other than Atlantic

bluefin tuna are landed and offloaded from the same trip and are recorded on the dealer weighout as sold.

(2) North of 36°00′ N. latitude, one bluefin per vessel per trip may be landed provided that it does not exceed two percent by weight of all other fish landed, offloaded and documented on the dealer weighout as sold at the end of each fishing trip.

(g) *Rod and reel.* Subject to the quotas in § 285.22, any person operating a vessel using rod and reel gear and possessing an Incidental Catch permit issued under § 285.21 may catch and retain, annually, one giant Atlantic bluefin tuna as an incidental catch. The permit holder must report to the nearest NMFS enforcement office found at § 285.30(c)(2), within 24 hours of landing, any giant Atlantic bluefin tuna taken and must make the tuna available for inspection and attachment of a metal tag. No such Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose.

6. Section 285.25 is amended by revising paragraph (c) to read as follows:

§ 285.25 Purse seine vessel requirements.

* * * * *

(c) *Inspection.* Any owner or operator of a purse seine vessel with a permit issued under § 285.21(b) must request an inspection of the vessel and fishing gear by an enforcement agent of NMFS before commencing any fishing trip that may result in the harvest of any regulated species and before offloading any Atlantic bluefin tuna. The vessel owner or operator must request such inspection at least 24 hours before commencement of a fishing trip and offloading by calling 508–563–5721 or 508–281–9261. Purse seine vessel owners or operators must have each medium and giant Atlantic bluefin tuna in their catch weighed (round weight), measured, and the information recorded on the appropriate forms at the time of offloading and prior to transporting said tuna from the area of offloading.

* * * * *

7. Section 285.26 is revised to read as follows:

§ 285.26 Size classes.

For any Atlantic bluefin tuna found with the head removed it is deemed, for purposes of this subpart, that the tuna, when caught, fell into a size class in accordance with the following formula: Total fork length equals pectoral fin fork length multiplied by a factor of 1.35. For this purpose, all measurements must be taken along the middle of the lateral surface from dorsal insertion of the pectoral fin of the beheaded fish to the fork of the tail (PF, see Figure 1). The pectoral fin fork length will be the sole criterion for determining the size class of a beheaded Atlantic bluefin tuna. Total fork length will be the sole criterion for determining the size class of whole (head on) Atlantic bluefin tuna. Atlantic bluefin tuna are deemed to fall into size class according to the following table; approximate round weights are given for illustrative purposes only.

Size class	Total fork length	Pectoral fin fork length	Approx. round wt.
Young school	<26 in (<66 cm)	<19 in (<48 cm)	<14 lbs (<6.4 kg)
School	26 to <57 in (66 to <145 cm)	19 to <42 in (48 to <107 cm)	14 to <135 lbs (6.4 to <61 kg)
Medium	57 to <77 in (145 to <196 cm)	42 to <57 in (107 to <145 cm)	<135 to <310 lbs (61 to <140 kg)
Giant	77 in (196 cm) or greater	57 in (145 cm) or greater	310 lbs (140 kg) or greater

8. Section 285.28 is amended by revising paragraph (a) to read as follows:

§ 285.28 Dealer permits.

(a) *General.* A dealer purchasing, receiving, possessing, importing or exporting Atlantic bluefin tuna must have a valid permit required under this section. If such purchase or receipt is made from a buy-boat, the buy-boat must have a valid permit under paragraph (1) of this section.

* * * * *

9. Section 285.29 is amended by revising paragraphs (a), (b) and (e), and by adding an OMB control number to read as follows:

§ 285.29 Dealer recordkeeping and reporting.

* * * * *

(a) Must submit to the Regional Director a daily report on a reporting card provided by NMFS. Said card must be postmarked within 24 hours of the purchase or receipt of each medium or giant Atlantic bluefin tuna. Each reporting card must be signed by the vessel permit holder or vessel operator and must show the Atlantic bluefin tuna vessel permit number, metal tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round or dressed weight, the whole fork length, gear used, and area where caught.

(b) Must submit to the Regional Director a weekly report on forms supplied by NMFS. Said report must be postmarked within 2 days after the end of each reporting week in which Atlantic bluefin tuna were purchased or received. Each report must specify accurately and completely: The number of tuna purchased or received, including imported tuna; location where each tuna was landed; the disposition of the tuna (names, addresses and, where applicable, country of destination); the source of the tuna (names and addresses); dates purchased or received; metal tag numbers (where applicable); round or dressed weight and whole fork length (by individual tuna); and any other information requested by the Regional Director. Also, dealers using buy-boats, in addition to the information required above, must include the precise time and date when each tuna was received aboard the buy-boat.

* * * * *

(e) Each operator of a buy-boat, in addition to the above, must notify the Regional Director of any intended offloading, and must request a vessel inspection at least 6 hours before such offloading, by calling 508–281–9261 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, local time, or at all other times during the day and weekends, by calling 508–992–7711. In making the request for inspection, the owner or operator of the buy-boat or a designated representative must provide his/her name, the buy-boat's name and permit number, the number of tuna received, and the location and anticipated time of landing in port.

(Approved by the Office of Management and Budget under OMB control number 0648–0239)

10. Section 285.30 is amended by revising paragraphs (c)(2) and (d) to read as follows:

§ 285.30 Metal tags.

* * * * *

(c) * * *

(2) Any person who catches a medium or giant Atlantic bluefin tuna and does not transfer it to a permitted dealer must contact the nearest NMFS enforcement office at the time of landing such Atlantic bluefin tuna and make the tuna available for inspection and attachment of a metal tag. The offices to contact are: Portland, Maine (207-780-3241); Otis Air Force Base, Massachusetts (508-563-5721); Brielle, New Jersey (201-528-3315); Atlantic Beach, North Carolina (919-247-4549); Brunswick, Georgia (912-265-0108); Miami, Florida (305-361-4224); St. Thomas, U.S. Virgin Islands (809-774-5226); San Juan, Puerto Rico (809-782-8686); St. Petersburg, Florida (813-893-3145); St. Joe, Florida (904-227-1879); or Corpus Christi, Texas (512-888-3362). The Regional Director may designate a person other than a NMFS agent to inspect and tag the fish. Such designation will be made in writing.

(d) *Removal of tags.* A metal tag affixed to any medium or giant Atlantic bluefin tuna must remain on the tuna until the tuna is either cut into portions or sold for export from the United States. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container. Tag numbers must be recorded on any document accompanying shipments of bluefin tuna for domestic commercial use or for export.

11. Section 285.31 is amended by revising paragraphs (a)(1), (a)(2), (a)(5), (a)(10), (a)(15), and by adding paragraphs (a)(30) through (a)(33), and (c), to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(1) Fish for, catch, possess, or land Atlantic bluefish tuna without a valid permit required under § 285.21 and carried onboard the vessel;

(2) Fish for, catch, possess, or land Atlantic bluefish tuna after fishing has been closed or before fishing has commenced under § 285.20, except under the provisions of § 285.27;

* * * * *

(5) Fish for, catch, possess, or land Atlantic bluefish tuna in excess of any allocation made under § 285.25(d);

* * * * *

(10) Land any tuna other than giant Atlantic bluefin tuna in forms other than whole or eviscerated, or to possess such bluefin tuna for commercial purposes in forms other than whole or eviscerated unless such tuna has been prepared for immediate packing in a sealed container for shipment or transport. A metal spike may be inserted into the spinal column, leaving a hole in the head of the fish, in order to destroy the spinal cord and enhance meat preservation and quality. In the case of giant Atlantic bluefin tuna, it is unlawful for any person or vessel subject to the jurisdiction of the United States to land any tuna in forms other than round, or with the head removed;

* * * * *

(15) Sell, offer for sale, or transfer to any person for a commercial purpose any giant Atlantic bluefin tuna caught incidentally with rod and reel gear under § 285.23(g);

* * * * *

(30) Fish for, catch, possess or land Atlantic bluefin tuna from the Gulf of Mexico except under § 285.23 (f) (l) and (g);

(31) Assault, resist, oppose, impede, intimidate, or interefere with any authorized officer in the conduct of any search, inspection, or seizure made in connection with enforcement of this part;

(32) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search by an authorized officer in the process of enforcing this part;

(33) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part.

* * * * *

(c) The Assistant Administrator may rescind the prohibition on removing the heads of young school, school and medium size Atlantic bluefin tuna if he determines that an alternative definitive method of identifying young school, school and medium size Atlantic bluefin tuna exists. The Assistant Administrator will publish a notice in the **Federal Register** of such rescission together with an explanation of the alternative method of identification.

12. A new figure 1 to part 285 is added as follows:

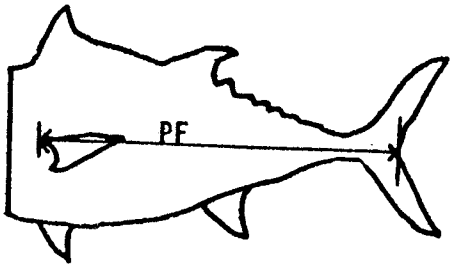

Figure 1. Pectoral fin to fork of tail measurement (PF).

[FR Doc. 91-31330 Filed 12-31-91, 2:11 pm]
BILLING CODE 3510-22-M

[Docket No. 911179-1279]

50 CFR Chapter VI

Policy Guidelines for the Use of Emergency Rules

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of policy guidelines for the use of emergency rules.

SUMMARY: NMFS provides guidelines for the Regional Fishery Management Councils (Councils) in determining whether the use of an emergency rule is justified under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The guidelines were also developed to provide the NMPS regional directors guidance in the development and approval of regulations to address events or problems which require immediate action.

EFFECTIVE DATE: February 5, 1992.

FOR FURTHER INFORMATION CONTACT: CDR Thomas L. Meyer, NOAA, Office of Fisheries Conservation and Management, NMFS, telephone: 301-427-2337.

SUPPLEMENTARY INFORMATION: Section 305(c) of the Magnuson Act provides for taking emergency action with regard to any fishery but does not define the circumstances that would justify such emergency action. Section 305(c) provides that:

1. The Secretary may promulgate emergency regulations to address an emergency if the Secretary finds that an emergency exists, without regard to whether a fishery management plan exists for that fishery;

2. The Secretary shall promulgate emergency regulations to address the emergency if the Council, by a unanimous vote of the voting members, requests the Secretary to take such action; and

3. The Secretary may promulgate emergency regulations to address the emergency if the Council, by less than a unanimous vote of its voting members, requests the Secretary to take such action.

The NOAA Office of General Counsel has defined the phrase "unanimous vote," in items 2 and 3 above, to mean the unanimous vote of a quorum of the voting members of the Council only. An abstention has no effect on the unanimity of the quorum vote. The only legal prerequisite for use of the Secretary's emergency authority is that an emergency must exist. Congress intended that emergency authority be available to address conservation, biological, economic, and social emergencies. In addition, emergency regulations may make direct allocations among user groups, if strong justification and the administrative record demonstrate that, absent emergency regulations, substantial harm will occur to one or more segments of the fishing industry. Controversial actions with serious economic effects, except under extraordinary circumstances, should be done through normal notice-and-comment rulemaking.

The preparation or approval of management actions under the emergency provisions of section 305(c) of the Magnuson Act should be limited to extremely urgent, special circumstances where substantial harm to or disruption of the resource, fishery, or community would be caused in the time it would take to follow standard rulemaking procedures. An emergency action may not be based on administrative inaction to solve a long-recognized problem. In order to approve an emergency rule, the Secretary must have an administrative record justifying emergency regulatory action and demonstrating its compliance with the national standards. In addition, the preamble to the emergency rule should indicate what measures could be taken or what alternative measures will be considered to effect a permanent solution to the problem addressed by the emergency rule.

The process of implementing emergency regulations limits substantially the public participation in rulemaking that Congress intended under the Magnuson Act and the Administrative Procedure Act. The Councils and the Secretary must, whenever possible, afford the full scope of public participation in rulemaking. In addition, an emergency rule may delay the review of non-emergency rules, because the emergency rule takes precedence. Clearly, an emergency action should not be a routine event.

NMFS provides the following guidelines for the Councils to use in determining whether an emergency exists:

Emergency Criteria

For the purpose of section 305(c) of the Magnuson Act, the phrase "an emergency exists involving any fishery" is defined as a situation that:

(1) Results from recent, unforeseen events or recently discovered circumstances; and

(2) Presents serious conservation or management problems in the fishery, including impacts on protected species or habitats; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

Emergency Justification

If the time it would take to complete notice-and-comment rulemaking would result in substantial damage or loss to a living marine resource, habitat, fishery, industry participants, or communities, emergency action might be justified under one or more of the following situations:

(1) Ecological—(A) to prevent overfishing as defined in a fishery management plan (FMP), or as defined by the Secretary in the absence of an FMP; or (B) to prevent other serious damage to the fishery resource or habitat; or

(2) Economic—to prevent significant direct economic loss or to preserve a significant economic opportunity that otherwise might be foregone; or

(3) Social—to prevent significant community impacts or conflict between user groups.

Dated: December 27, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-204 Filed 1-3-92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Parts 601 and 605

[Docket No. 910496-1307]

Regional Fishery Management Councils; Guidelines for Council Operations and Administration

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS revises the regulations and guidelines governing appointments to, and the operation and administration of, the Regional Fishery Management Councils (Councils) established by the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the preparation of fishery management plans (FMPs) and FMP amendments under the Magnuson Act. These revisions make existing regulations and guidelines consistent with the requirements of sections 302 and 303 of the Magnuson Act as amended by sections 108 and 109 of Public Law 101-627. The revisions: (1) Define Council members' qualifications and strengthen

the appointment process; (2) place a limit on the number of consecutive terms Council voting members may serve; (3) adjust Council voting members' pay and provide for reimbursement of actual expenses for Council staff members; (4) require the NMFS Regional Director or designee, serving on a Council, on the final vote on any matter to be transmitted to the Secretary of Commerce (Secretary) by the Council, to submit a written statement of the reason(s) for casting a negative vote; (5) require each Council to have a Fishing Industry Advisory Committee (FIAC); (6) require notification to local newspapers of closed or partially closed Council meetings; (7) provide for consideration of new information from the public when a Council considers new information from a state or Federal agency or from a Council advisory body, and provide for public comment on the new information presented; and (8) require that each FMP or FMP amendment include a Fishery Impact Statement (FIS).

EFFECTIVE DATE: February 5, 1992.

FOR FURTHER INFORMATION CONTACT: CDR Thomas L. Meyer, NOAA, telephone: 301-427-2337.

SUPPLEMENTARY INFORMATION: Public Law 101-627, the "Fishery Conservation Amendments of 1990," amended and reauthorized the Magnuson Act through September 30, 1993. Section 108 of the Fishery Conservation Amendments amended certain provisions of the Magnuson Act governing the appointment of members to, and the operation and administration of, the eight Regional Fishery Management Councils established by the Magnuson Act. A proposed rule was published at 56 FR 23856 on May 24, 1991, inviting public comments until July 23, 1991. A description of the regulatory amendments and the rationale for them appear in the preamble to the proposed rule, and will not be repeated here.

A technical change was made to § 605.15(b)(2) to clarify that, when the Secretary prepares an FMP or amendment, the Secretary must also include an FIS.

Comments and Responses

Five individuals submitted 23 comments on the proposed rule; their comments are summarized below, with responses to them.

1. *Comment:* One commenter stated that the proposed rule would make the Governors solely responsible for determining whether a nominee is qualified.

Response: No change was made. Clearly, § 601.33(e) indicates that the Secretary is responsible for determining whether a nominee is qualified. The Governor is responsible for proposing qualified candidates and supporting their nominations by providing the Secretary with documentation demonstrating that each nominee is knowledgeable and experienced.

2. *Comment:* One commenter suggested adding language to § 601.33(g) to detail the Secretary's responsibilities after receiving the Governor's list of qualified individuals.

Response: The suggested change is more appropriately placed in § 601.33(e), which already contains much of the language proposed. Although the Secretary's review responsibilities are implicit in the current language of this section, NMFS, for clarity, has added at the beginning of § 601.33(e), "The Secretary will review each list of nominees submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of the qualifications required by the Magnuson Act, and the qualification criteria as prescribed in § 601.33(c)." In addition, the word "shall" is substituted for "may" in the second sentence of § 601.33(e), to correspond to revised language in the Magnuson Act.

3. *Comment:* One commenter suggested that § 601.33(c)(6) is a catch-all category and should be excluded. To the extent that there are highly knowledgeable or experienced lawyers, consultants, academics, and journalists, the commenter felt they should qualify under § 601.33(c)(4).

Response: No change was made. Individuals in the fields listed in § 601.33(c)(6) may have extensive knowledge of the fisheries and could add another viewpoint to the Councils. These individuals may have obtained substantial knowledge of the fisheries in activities other than those directly related to management of the fisheries as provided in § 601.33(c)(4). The qualifications of these individuals, therefore, should be listed in a separate category. The language of § 601.33(c)(6) has been strengthened by changing the language to read, "Teaching, journalism, writing, consulting, legal practice, or researching matters directly related to fisheries, fishery management, and marine resource conservation."

4. *Comment:* One commenter suggested that § 601.33(h) should include language not simply to maintain a balance between commercial and recreational fisheries as required under the Magnuson Act, but also a balance among the major fishing gear types harvesting fish or shellfish subject to an FMP.

Response: No change was made. Considering the limited number of appointments to any one Council, representation could not be provided for all major fishing gear types. The FIAC is one appropriate mechanism to allow Councils to provide representation for all gear types in the Council process.

5. *Comment:* One commenter suggested that, to avoid possible conflict of interest problems, the Secretary should promulgate regulations that prohibit the appointment to a Council of any individual who has any direct or indirect financial interests in the fisheries under the jurisdiction of the Council.

Response: No change was made. The Magnuson Act specifically authorizes and encourages individuals with a financial interest in fisheries to participate in Council activities by providing in section 302(b)(2)(A) for the appointment of members of the fishing industry based on their occupational experience. Section 302(k) of the Magnuson Act addresses the possibility of a conflict of interest by requiring nominees to a Council, voting members of a Council, and the executive director of a Council to disclose any financial interest held. Nominees are required to complete a "statement of financial interest" form that is retained on file in the Council offices and made available for public inspection at a reasonable hour upon request.

6. *Comment:* One commenter suggested that regulations he promulgated to require not only that individual Councils have fair and equitable representation among all participants in the fisheries under the jurisdiction of the Council, but that each state delegation of at-large members be representative, to the maximum extent practicable, of all the participants in the fishery. The commenter also felt that the regulations should ensure that one group of participants in the fishery does not have greater representation than another, either on the Council or within an individual state's delegation of at-large members.

Response: No change was made. The principle of balanced representation is the main focus of section 302(b)(2) of the Magnuson Act. It is not possible, however, to provide representation for all participants in the fisheries, given the limited number of appointed members on each Council and the limitation that the Secretary make appointments only from among those individuals nominated by Governors of the Councils' constituent states.

7. *Comment:* One commenter suggested that regulations should

provide criteria for the Secretary to reject all three nominees by a Governor and request the Governor to submit three new nominees if the addition of any of the nominated members would not maintain fair and balanced representation either on the Council or within an individual state's delegation of at-large members.

Response: No change was made. Section 302(b)(2) of the Magnuson Act requires the Secretary, in making appointments to the Councils, "to the extent practicable, to ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council." The Magnuson Act does not provide for the rejection of a nominee because of balancing problems, but only in cases where the Secretary determines that the nominee is not qualified.

8. *Comment:* One commenter suggested that the Secretary promulgate regulations requiring the Councils to establish more than one FIAC, depending on the needs of the individual Council, to ensure the Council receives broad public input.

Response: No change was made. Section 302(f)(6) of the Magnuson Act allows each Council to determine its organization and prescribe its practices and procedures for carrying out its functions. Section 302(g) of the Magnuson Act requires the Councils to establish and maintain a scientific and statistical committee and a fishing industry advisory committee, and allows each Council to establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under the Magnuson Act. The Magnuson Act does not specify how many advisory panels a Council may have.

9. *Comment:* One commenter suggested that the Secretary prohibit Councils from directly using recommendations from the advisory committees in Council proceedings. The commenter stated that Councils frequently use advisory committee recommendations as the beginning mark from which to began deliberations, which, in effect, increases the importance of advisory panel decisions that have been made with restricted public input.

Response: No change was made. NMFS believes that the advice given to the Councils by their advisory committees is extremely valuable and should be used in developing Council management programs, although we expect the Councils to use information from other sources as well.

10. *Comment:* One commenter suggested that the Secretary require that members on advisory committees be representatives of all sectors of the industry and that no one sector should be overrepresented. The commenter also suggested that members should be appointed by the NMFS Regional Director from a recommendation by the Council.

Response: No change was made. The Magnuson Act specifies that the Councils appoint their advisory bodies. Moreover, section 302(g)(3) of the Magnuson Act requires that appointments to the FIAC shall be made by each Council so as to provide fair representation to commercial fishing interests in the geographical area of authority of the Council.

11. *Comment:* One commenter suggested that Council appointments to the FIAC provide fair representation to recreational as well as commercial fishing interests.

Response: No change was made for the reasons given in response 10. NMFS believes, however, that the FIAC should include both commercial and recreational fishing interests, although Congress only specifically referenced commercial fishing interests when requiring fair representation on the committee.

12. *Comment:* One commenter would like to see the Regional Director's statement for rendering a negative vote, as provided for in section 302(e)(4) of the Magnuson Act, be made available to the public when the statement is transmitted to the Secretary.

Response: No change was made. As proposed in this rulemaking, § 605.24(a)(3)(v) will allow the Regional Director 10 working days after adjournment of the Council meeting to submit a statement to the Council giving reason(s) for a negative vote. This statement will be available to the public through the Councils at that time.

13. *Comment:* One commenter suggested that, in addition to providing for public comment when the Council receives new information from a state or Federal agency or from a Council advisory body, the public should be provided an opportunity for comment if new information is provided to the Council by any member of the Council.

Response: No change was made. In amending the Magnuson Act, Congress referenced new information only from state or Federal agencies and a Council advisory body.

14. *Comment:* One commenter stated that the present financial disclosure form does not provide enough meaningful information to reveal all potential conflict-of-interest areas. In addition, financial interests should be disclosed periodically or whenever a new business interest raises the potential of new conflicts.

Response: No change was made to the regulations. NMFS agrees with the comment and will develop a proposed rule requiring each Council member to update his/her financial disclosure form annually, and requiring that the following additional information be provided on the financial disclosure form: the fisheries participated in, the product type produced, and the gear type utilized. Section 302(k)(4) of the Magnuson Act requires that the form be updated at any time any such financial interest is acquired or substantially changed.

15. *Comment:* One commenter stated that Secretarial appointment of a fair and balanced Council should not be disrupted through a Council member's change of allegiance to new clients during that member's term. The commenter felt that achieving certain and balanced representation on the Council could best be achieved through freezing the candidate's industry interests and conflicts at the time of his/her appointment and that such a change in allegiance should require termination of that Council member's term.

Response: No change was made. Individuals are appointed on the basis of knowledge and experience with an effort to achieve fair and balanced representation to the extent possible. As long as an individual properly discloses new interests or changes to existing interests, as section 302(k)(4) of the Magnuson Act requires, a change in a member's financial interest is not a basis for terminating the term of that individual. The Secretary has no authority to restrict a Council member's employment or affiliation. Fair and balanced representation on the Council is reviewed annually, and will be taken into consideration when appointing or reappointing members.

16. *Comment:* One commenter opposed Council appointment of executive directors, staff, or hired lobbyists of either fisheries trade associations or environmental organizations.

Response: No change was made. The Magnuson Act does not provide for exclusion of these individuals. Section 302(b)(2)(B) of the Magnuson Act requires that the Secretary, in making appointments, "to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and

recreational fisheries under the jurisdiction of the Council."

17. *Comment:* One commenter strongly supported a change in the Council nomination process as provided in § 601.33(h) to ensure "that those persons dependent for their livelihood upon the fisheries within Council jurisdiction are fairly represented as voting members," especially as technologies and participants change in the fishery.

Response: No change was made for the reasons given in response 16. To the extent practicable, the Secretary will ensure fair representation on the Council of active participants in the fisheries.

18. *Comment:* One commenter suggested the preparation of an annual report from the NMFS Regional Director describing the active participants in the commercial and recreational fisheries within a Council's area of authority, which would be made public.

Response: No change was made. Section 302(b)(2)(B) of the Magnuson Act requires the Secretary to submit annually a report to Congress describing the actions being taken to ensure that a fair and balanced apportionment of active participants (or their representatives) in the commercial and recreational fisheries is achieved. Once an annual report is sent to Congress, it is available to the public.

19. *Comment:* One commenter requested that appointments to the Councils and to the FIAC be made in accordance with the annual report concerning membership on the Councils.

Response: No change was made. The report will be taken into consideration when making appointments.

20. *Comment:* One commenter requested that the Councils limit the maximum annual salary to be earned by individual Council members through Council business. The commenter felt that regulations should permit additional payment to individuals charged with extra Council responsibilities, but not without prior public testimony, Council debate, and approval of the additional business and expenses.

Response: No change was made. Section 302(d) of the Magnuson Act establishes allowable compensation and expenses for Council members. The Secretary does not have the authority to control the salary or payment of funds to individual Council members. Limits on members' activities are within the Councils' purview.

21. *Comment:* One commenter supported the language on the review of new information and suggested that the phrase "a reasonable opportunity" include the opportunity to examine and consider the data fully. The commenter suggested that public response should not be required until a later meeting following adequate notice.

Response: No change was made. The position of NMFS is that the Council is in the best position to determine what is a reasonable opportunity. The amount of time to respond to new information should correspond to the urgency and complexity of the issue.

22. *Comment:* One commenter stated that the Regional Director's negative vote statement should specifically apply to emergency actions.

Response: No change was made. The requirement for the Regional Director to explain a negative vote pertains to all final votes on any matter to be transmitted to the Secretary by a Council; this includes emergency actions.

23. *Comment:* One commenter stated that public confidence in the management process would be enhanced by requiring all Councils to hold at least one meeting each year in every constituent state.

Response: No change was made. Council meetings are held in various locations to make it easier for all participants in fisheries to attend, but the location is left to the Council's discretion. Councils are no longer restricted to meeting only in the concerned geographical area by section 302(e)(3) of the Magnuson Act and may now meet in any of the constituent states of a Council.

In addition to the comments and responses presented above, two individuals submitted three comments on language in the preamble to the proposed rule; their comments are summarized below, with responses to them.

1. *Comment:* One commenter had no objection to requesting that each nominee provide "a statement of his or her general philosophy on the conservation and management of living marine resources," but stated that a mere statement of philosophy means little and can be easily manipulated by less knowledgeable but more sophisticated "wordsmiths" to the detriment of experienced and knowledgeable commercial and recreational fishermen who have been active in fishery conservation.

Response: NMFS agrees in principle, and has changed the word "general" to "guiding" in reference to the philosophy on conservation and management. NMFS also believes that, because such statements can be made public, it is unlikely that nominees will provide exaggerated statements.

2. *Comment:* One commenter stated that under the qualification, nomination, and appointment of Council members section, the preamble states that "It is agency policy to request that each nominee provide a statement of his or her general philosophy on the conservation and management of living marine resources." The commenter felt that this policy is unnecessary and indicates an intention to promote an agency bias in the selection of nominees. The commenter stated that section 302(b) of the Magnuson Act stipulates that the members of the Councils are to be appointed on the basis of their knowledge and experience. It does not require them to hold particular views in regard to fisheries management.

Response: No change was made. NMFS agrees that nominees should be appointed to Councils primarily on the basis of their knowledge and experience. Extremely important, however, is their ability to act as stewards of the living marine resources for which they are responsible. Because of the national and international developments that significantly affect the growth, maturation, and equitable use of fisheries resources, it has become increasingly critical that the individuals chosen for membership on the Councils possess a reasonably accurate perception of the complex marine resource conservation and fishery management issues they will face as future Council members. Annual appointments to the Council are continually reassessed in terms of members' qualifications, equitable representation, and balance of the many fishery resource user interests. Information relative to an individual's perception of the fishery conservation and resource management issues is an important supplement to the information provided in the resume and other background documents required from the nominees, documents that are vital in determining nominees' qualifications. NMFS, therefore, requested that each nominee provide a written statement of philosophy relative to his/her knowledge and experience of marine resource management issues. This is a request for additional information to assist in making the best selection of individuals for the good of the Nation and the marine resources. Because the total membership is limited in number, this information is an important factor for the Secretary to consider when assessing whether his appointments will provide for a membership that will be able to address effectively the resource problems of the fishery.

3. *Comment:* One commenter stated that under the consecutive terms of Council members section, the preamble states that "It is agency policy to give preference in the selection process to individuals nominated by the Governors who have not already served two consecutive terms." Congress statutorily imposed a limitation of three consecutive terms for Council members in order to address the question of providing balance to Council appointments. The policy statement in the **Federal Register** notice is contrary to the intent of Congress and, in the opinion of the commenter, should be withdrawn.

Response: No change was made. NMFS needs to expand the field of nominees who possess the varied knowledge and experience necessary to confront serious future fishery management problems. A diverse Council membership is desirable for the Councils to consider properly the problems, solutions, and potential effects on the various sectors of the industry impacted by fisheries management. NMFS believes this can be accomplished by giving priority consideration to new nominees and those who have not completed two Council terms. This will greatly aid in NMFS' ability to meet the requirements of the Fishery Conservation Amendments of 1990 to " * * * ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council." This in no way suggests that the reappointment of individuals to a third consecutive term is prohibited by this preference. Certainly, there are Council members whose knowledge, experience, and demonstrated ability to act as stewards of the Nation's resources would qualify them for a third term on the Council. Given the seriousness of this task, it is vital for the Secretary to consider the greatest number of qualified individuals for appointment, particularly since the selection of individuals is constrained by a limited number of at-large seats on each Council.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is not a "major" rule requiring a regulatory impact analysis under E.O. 12291. It revises the regulations and guidelines governing appointments to, and the operation and administration of, the eight Regional Fishery Management Councils established by the Magnuson Act and the preparation of FMPs and FMP amendments under the Magnuson Act. These revisions concern such matters as appointments, eligibility for consecutive terms, members' pay, and notice of closed meetings, which have no effect on industry participants or operations. Other provisions such as requiring the establishment of the FIAC and requiring preparation of an FIS would also have no direct effect on industry participants or operations. These provisions are designed to improve the decisions reached by the Councils.

For the same reasons, the General Counsel of the Department of Commerce has certified to the Chief Counsel of Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This 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 Parts 601 and 605

Fisheries, Fishing.

Dated: December 30, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 601 and 605 are amended as follows:

PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

1. The authority citation for part 601 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 601.32 is amended by adding new text at the end of the existing text, to read as follows:

§ 601.32 Terms of Council members.

* * * No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term completed prior to January 1, 1986, shall not be counted in determining the number of consecutive terms served by any Council member.

3. In § 601.33, paragraphs (c), (e), and (h) are revised to read as follows:

§ 601.33 Appointments.

* * * * *

(c) Governors are responsible for nominating only those persons who meet the qualification requirements of the Magnuson Act; they shall provide a statement explaining how each nominee meets the qualification requirements; and they must provide appropriate documentation to the Secretary that each nomination was made in consultation with commercial and recreational fishing interests, and that each nominee who, by reason of his or her occupational or other experience, scientific expertise, or training, is knowledgeable and experienced in one or more of the following ways related to the fishery resources of the geographical area of concern to the Council:

(1) Commercial fishing or the processing or marketing of fish, fish products, or fishing equipment;

(2) Fishing for pleasure, relaxation, or consumption,or experience in any business supporting fishing;

(3) Leadership in a state, regional, or national organization whose members participate in a fishery in the Council's area of authority;

(4) The management and conservation of natural resources, including interactions with industry, government bodies, academic institutions, and public agencies. This includes experience serving as a member of a Council, Advisory Panel, Scientific and Statistical Committee, or Fishing Industry Advisory Committee;

(5) Representing consumers of fish or fish products through participation in local, state, or national organizations, or performing other activities specifically related to the education or protection of the consumer of marine resources; and

(6) Teaching, journalism, writing, consulting, legal practice, or researching matters related to fisheries, fishery management, and marine resource conservation.

* * * * *

(e) The Secretary will review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of the criteria prescribed in § 601.33(c). If the Secretary determines that any nominee is not qualified, the Secretary will notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the nominee in question. The Secretary reserves the right to determine whether nominees are qualified.

* * * * *

(h) The Secretary must, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries in the Council's area of authority. Further, the Secretary must take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries in the Council's area of authority are fairly represented as voting members.

4. In § 601.39, paragraph (a) is revised to read as follows:

§ 601.39 Council member compensation.

(a) The voting members of each Council who are not employed by the Federal Government or any state or local government (that is, anyone who does not receive compensation from any such government for the period when performing duties as a Council member) shall, until January 1, 1992, receive compensation at the daily rate for a GS-18 in the General Schedule, and after December 31, 1991, at the daily rate for a GS-16 (Step 1) in the General Schedule when engaged in the actual performance of duties as assigned by the Chairman of the Council. Actual performance of duties, for the purposes of compensation, may include travel time.

* * * * *

PART 605—GUIDELINES FOR COUNCIL OPERATIONS/ ADMINISTRATION

5. The authority citation for part 605 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 605.15, existing paragraphs (b)(2) through (b)(4) are redesignated as paragraphs (b)(3) through (b)(5), respectively, and a new paragraph (b)(2) is added, to read as follows:

§ 605.15 Establishment of management measures.

* * * * *

(b) * * *

(2) Each FMP or amendment, prepared by or submitted by a Council to the Secretary after October 1, 1990, must include a Fishery Impact Statement (FIS). The FIS shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on participants in the fisheries affected by the FMP or amendment, and on participants in the fisheries conducted in adjacent geographical areas under the authority of another Council, after consultation with such Council and representatives of those participants.

* * * * *

7. In § 605.23, the introductory text of paragraph (d) is revised, existing paragraph (d)(2) is redesignated as paragraph (d)(3), and a new paragraph (d)(2) is added, to read as follows:

§ 605.23 Council organization.

* * * * *

(d) *Advisory groups.* Each Council must establish a Scientific and Statistical Committee (SSC) and a Fishing Industry Advisory Committee (FIAC), and may establish such other Advisory Panels (APs) as necessary or appropriate to assist in carrying out its functions. Councils that already have equivalent fishing industry panels do not need to establish an FIAC. Advisory group size is discretionary within the resources budgeted to each Council. Each Council must specify procedures in its Statement of Organization, Practices and Procedures (SOPP) for continuing involvement of its advisory groups in the development of amendments to Fishery Management Plans (FMPs). Procedures for appointing members to these groups should also be specified in the SOPPs.

* * * * *

(2) *Fishing Industry Advisory Committee (FIAC).* The FIAC provides information and recommendations on, and assists in the development of, FMPs and their amendments. Appointments to the FIAC shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographic area of authority of the Council.

* * * * *

8. In § 605.24, paragraph (a)(2) is amended by adding new text at the end of existing text, paragraph (a)(3)(i) is revised, new paragraph (a)(3)(v) is added, and paragraphs (a)(5)(i) introductory text, (a)(5)(ii), and (a)(7)(i) are revised, to read as follows:

§ 605.24 Council meetings and hearings.

* * * * *

(a) * * *

(2) * * * If a meeting or portion of a meeting is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major, affected fishing ports) of the time and place of the meeting. Notification is not required regarding any brief closure of a portion of a meeting to discuss employment matters or other internal administrative matters.

(3) * * *

(i) All meetings of the Council advisory panels and working groups must be open, unless closed in accordance with paragraph (a)(5) of this section. Interested persons will be permitted to present oral or written statements regarding the matters on the agenda at regular meetings of the Council, within reasonable limits established by the Chairman. At any time when a Council determines it appropriate to consider new information from a state or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures. A vote is required for Council approval or amendment of a fishery management plan (including any proposed regulations), a Council finding that an emergency exists involving any fishery, or Council comments to the Secretary on fishery management plans developed by the Secretary.

* * * * *

(v) On the final vote on any matter to be transmitted to the Secretary by a Council, the Regional Director of the National Marine Fisheries Service serving on the Council, or his or her designee, when rendering a negative vote, shall submit to the Council within 10 working days after adjournment of the Council meeting a statement explaining the reason(s) for the vote. This statement shall remain on file with the Council and copies made available to the public upon request.

* * * * *

(5) * * *

(i) Each Council, SSC, FIAC, and AP:

* * * * *

(ii) Closed meetings, or portions thereof, must be announced in the news media.

* * * * *

(7) * * *

(i) Each Council must conduct its meetings at appropriate times and places in any of the constituent states of the Council. Two or more Councils may hold joint meetings within a constituent state of one of the Councils for the purpose of discussing issues of mutual concern or for the purpose of developing or amending a joint FMP.

* * * * *

[FR Doc. 92-203 Filed 1-3-92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Parts 672 and 675

[Docket No. 911183-1322]

RIN 0648-AE46

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS publishes a final rule that delays the opening of the 1992 trawl fisheries in the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands area (BSAI) until Steller sea lion protection measures are implemented or until the Secretary of Commerce (Secretary) publishes a notice in the **Federal Register** disapproving Amendment 25 to the Fishery Management Plan for Groundfish of the GOA and Amendment 20 to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMPs). This action is necessary to prevent the groundfish trawl fisheries from beginning before the Secretary can determine whether the Steller sea lion protection measures in Amendments 20 and 25 are necessary. This action is intended to further the goals and objectives contained in the GOA and BSAI FMPs and the Endangered Species Act (ESA).

EFFECTIVE DATE: January 1, 1992

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained by writing to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Biologist, NMFS, (907) 586-7229.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the GOA and the BSAI are managed by the Secretary under the respective FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations governing the foreign fishery at 50 CFR part 611 and by regulations governing the U.S. fishery at 50 CFR parts 672 and 675. Additional regulations applicable to U.S. fisheries are codified at 50 CFR part 620.

At its September 23-29, 1991, meeting, the Council adopted Amendment 20 to the BSAI FMP and Amendment 25 to the GOA FMP that would authorize the implementation of groundfish management measures for purposes of protecting Steller sea lions, a species of marine mammal listed as threatened under the ESA. The proposed rule that would implement these amendments was published in the **Federal Register** for public review and comment on November 18, 1991 (56 FR 58214). The Secretarial review schedule for Amendments 20 and 25 allows for a January 20, 1992, effective date of the sea lion protection measures.

The 1992 groundfish fishery is scheduled to commence on January 1, 1992. However, NMFS has determined that a delay of the 1992 groundfish trawl fisheries is necessary until Steller sea lion protection measures are implemented or until the Secretary publishes a notice in the **Federal Register** disapproving Amendments 20 and 25. This action is appropriate for the conservation and management of the groundfish fishery. To carry out their objectives, NMFS prepared a proposed rule that would delay the 1992 trawl fisheries and published it in the **Federal Register** on November 26, 1991 (56 FR 59922). The purpose of the season delay is to prevent the groundfish trawl fisheries from beginning before the Secretary can determine whether the Steller sea lion protection measures of Amendment 20 and 25 are necessary. A detailed explanation of this action is provided in the proposed rule.

The proposed rule also described NMFS' determination that the proposed delay of the 1992 groundfish trawl fisheries would require an extension of the January 15, 1992, control date for trawl vessel entry into the Alaska groundfish fisheries for purposes of access limitation management measures that may be considered by the Council (55 FR 36302; September 2, 1990, as corrected at 55 FR 37729; September 13, 1990). By this action, the control date for trawl vessel participation in the groundfish fisheries is extended from January 15, 1992, to a date that is 15 calendar days after the effective date of Amendments 20 and 25.

Comments were invited on the proposed rule until December 4, 1991. No comments were received.

The final rule is being issued without any change from the proposed rule.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an EA for this rule and the Assistant Administrator concluded that no significant impact on the environment will occur as a result of this rule. Copies of the EA may be obtained from the Director, Alaska Region, NMFS (Regional Director) (see **ADDRESSES**).

On April 19, 1991, NMFS concluded formal ESA Section 7 consultation on the BSAI and GOA FMPs and fisheries. The biological opinions issued for the consultations concluded that the FMPs and fisheries are not likely to jeopardize the continued existence and recovery of any endangered or threatened species under the jurisdiction of NMFS. Adoption of the management measures described in this rule will not affect listed species in a way that was not already considered in the aforementioned biological opinions. NMFS determined that no further Section 7 consultation is required for adoption of this rule.

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The regulatory impact review prepared for this action concluded that none of the measures in this rule would cause impacts considered significant for purposes of Executive Order 12291. A copy of this review is available from the Regional Director (see **ADDRESSES**).

The FRFA prepared as part of the EA/RIR/FRFA for this action concluded that this rule could have significant effects on small entities. A detailed explanation is provided in the proposed rule.

The reasons justifying implementation of this final rule make it impracticable and contrary to the public interest to provide a 30-day "cooling off" period under section 553(d) of the Administrative Procedure Act. The scheduled public review and comment period for Amendments 20 and 25 will not allow for Secretarial approval of the sea lion protection measures prior to the start of the 1992 fishing year, January 1. Implementation of this final rule to delay the start of the fishing year until Steller sea lion protection measures are implemented, or until the Secretary publishes a notice in the **Federal Register** disapproving Amendments 20/25, is imperative for it to meet its intended purpose.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Since the appropriate State agency did not reply within the statutory time period, consistency is automatically inferred.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping.

Dated: December 30, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.23, paragraph (d) is added to read as follows:

§ 672.23 Seasons.

* * * * *

(d) Notwithstanding any other provision of this part, directed fishing for groundfish with trawl gear in the Gulf of Alaska is prohibited for 00:01 a.m. Alaska local time, January 1, 1992, until the date upon which final rules implementing Amendment 25 to the Fishery Management Plan for Groundfish of the Gulf of Alaska are made effective or until the Secretary publishes a notice in the **Federal Register** disapproving Amendment 25.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIANS ISLANDS AREA

3. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

In § 675.23, paragraph (d) is added to read as follows:

§ 675.23 Seasons.

* * * * *

(d) Notwithstanding any other provision of this part, directed fishing for Groundfish with trawl gear in the Bering Sea and Aleutian Islands area is prohibited from 00:01 a.m. Alaska local time, January 1, 1992, until the date upon which final rules implementing Amendment 20 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands are made effective or until the Secretary publishes a notice in the **Federal Register** disapproving Amendment 20.

[FR Doc. 91-31331 Filed 12-31-91; 12:45 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 3
Monday, January 6, 1992

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139

[Docket No. A0-14-A64, etc; DA-90-017]

RIN 0581-AA37]

Milk in the New England and Other Marketing Areas; Extension of Time for Filing Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR Part	Marketing area	AO Nos.
1001	New England	AO-14-A64
1002	New York-New Jersey	AO-71-A79
1004	Middle Atlantic	AO-160-A67
1005	Carolina	AO-388-A3
1006	Upper Florida	AO-356-A29
1007	Georgia	AO-366-A33
1011	Tennessee Valley	AO-251-A35
1012	Tampa Bay	AO-347-A32
1013	Southeastern Florida	AO-286-A39
1030	Chicago Regional	AO-361-A28
1032	Southern Illinois-Eastern Missouri.	AO-313-A39
1033	Ohio Valley	AO-166-A60
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A55
1040	Southern Michigan	AO-225-A42
1044	Michigan Upper Peninsula.	AO-299-A26
1046	Louisville-Lexington-Evansville.	AO-123-A62
1049	Indiana	AO-319-A38
1050	Central Illinois	AO-355-A27
1064	Greater Kansas City	AO-23-A60
1065	Nebraska-Western Iowa.	AO-86-A47
1068	Upper Midwest	AO-178-A45
1075	Black Hills, South Dakota.	AO-248-A21
1076	Eastern South Dakota	AO-260-A30
1079	Iowa	AO-295-A41
1093	Alabama-West Florida	AO-386-A11
1094	New Orleans-Mississippi.	AO-103-A53
1096	Greater Louisiana	AO-257-A40
1097	Memphis, Tennessee	AO-219-A46
1098	Nashville, Tennessee	AO-184-A55
1099	Paducah, Kentucky	AO-183-A45
1106	Southwest Plains	AO-210-A52
1108	Central Arkansas	AO-243-A43
1124	Pacific Northwest	AO-368-A19
1126	Texas	AO-231-A60
1131	Central Arizona	AO-271-A29
1134	Western Colorado	AO-301-A22
1135	Southwestern Idaho-Eastern Oregon.	AO-380-A9
1137	Eastern Colorado	AO-326-A26
1138	New Mexico—West Texas.	AO-335-A36
1139	Great Basin	AO-309-A30

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rule.

SUMMARY: This notice extends the time for filing exceptions to a recommended decision issued November 6, 1991, concerning proposed amendments to all federal milk marketing orders. The Milk industry Foundation and International Ice Cream Association requested the additional time to complete exceptions to the recommended decision.

DATES: Exceptions now are due on or before January 31, 1992.

ADDRESSES: Exceptions (four copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 720-4829.

SUPPLEMENTARY INFORMATION: Prior documents in the proceeding:

Advance Notice of Proposed Rulemaking: Issued March 29, 1990; published April 3, 1990 (55 FR 12369).

Notice of Hearing: Issued July 11, 1990; published July 17, 1990 (55 FR 29034).

Extension of Time for Filing Briefs and Reply Briefs: Issued March 28, 1991; published April 3, 1991 (56 Fr 13603).

Recommended Decision: Issued November 6, 1991; published November 22, 1991 (56 FR 58972).

Notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in all Federal order marketing areas which was issued November 6, 1991, is hereby extended to January 31, 1992.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139

Milk marketing orders.

The authority citation for 7 CFR parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139 continues to read as follows:

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

Dated: December 24, 1991.

Daniel Haley,
Administrator.

[FR Doc. 92-186 Filed 1-3-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-91-17]

Petition for Rulemaking; Summary of Petitions Received; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for rulemaking received; correction.

SUMMARY: This action makes a correction to the Notice of summaries of petitions for rulemaking published on October 25, 1991, (56 FR 55241). The petition was prepared by Mr. Lawrence B. Smith, Attorney at Law, 3938 E. Grant Rd., ι191, Tucson, AZ 85712; Tel.: (602) 326-0283, not (602) 326-0238, as published.

FOR FURTHER INFORMATION CONTACT: Angela M. Washington, Office of

Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-5571.

DATES: Comments on the petition must be received on or before January 27, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Administration Regulations (14 CFR part 11).

Issued in Washington, DC, on December 19, 1991.

Denise D. Castaldo,

Manager, Program Management Staff.

On page 55242, in the **Federal Register** of October 25, 1991, first column, line 35 to the end of the document is correctly revised to read as follows:

Docket No.: 26642

Petitioners: Marvin Borodkin, S. Jon Trachta, and Stephen Parkman.

Regulations affected: 14 CFR 13.19; This notice publishes for public comment a verbatim summary of the petition as provided by the petitioners.

Subject: Amendment of FAR § 13.19 (14 CFR 13.19).

To: Rules Docket (AGC-10), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

From petitioners: Marvin Borodkin, S. Jon Trachta and Stephen Parkman, all of Tucson, Arizona.

Prepared by: Lawrence B. Smith, Attorney at Law, 3938 E. Grant Rd., ‹191, Tucson, AZ 85712; Tel.: 602/326-0283, Fax: 602/326-8230.

Authority: Administrative Procedure Act, 5 U.S.C. 553(e), 14 CFR 11.25.

Purpose: To amend FAR § 13.19 to include all explicit statement that the Administrator claims and exercises authority to suspend or revoke airmen and operator certificates as an alternative and/or concurrent penalty to that of a civil-money fine for the violation of safety rules.

Comment: FAA officials interpret section 609 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1429(a), to authorize the Administrator to suspend or revoke certificates strictly as punishment for safety violations when no issue of qualification is involved. FAR § 13.19 purports to interpret the authority granted by section 609, yet says nothing of violations or penalties; common sense dictates that it should, so that airmen are warned that their licenses are at risk for such behavior. Nothing in the amendment adds to or changes any FAA enforcement policy.

[FR Doc. 92-149 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

15 CFR Part 303

[Docket No. 911184-1284]

Proposed Limit on Duty-Free Insular Watches in Calendar Year 1992

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Territorial and International Affairs, Department of the Interior.

ACTION: Proposed rule and request for comments.

SUMMARY: This action invites public comment on a proposal to amend 15 CFR part 303, which governs duty-exemption allocations and duty-refund entitlements for watch producers in the United States' insular possessions (the Virgin Islands, Guam, and American Samoa) and the Northern Mariana Islands.

DATES: Comments must be received on or before February 5, 1992.

ADDRESSES: Address written comments to Frank Creel, Director, Statutory Import Programs Staff, room 4204, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377-1660, same address as above.

SUPPLEMENTARY INFORMATION: The insular possessions watch industry provision in sec. 110 of Public Law 97-446 (96 Stat. 2331) (1983) (19 U.S.C. 1202 note) requires the Secretary of Commerce and the Interior Secretary of the Interior, acting jointly, to establish a limit on the quality of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands. Regulations on the establishment of these quantities and shares are contained in sec. 303.3 and 303.4 of title 15, Code of Federal Regulations (15 CFR 303.3 and 303.4). Section 303.6(h) gives the Secretaries authority to propose changes in § 303.14.

The Departments propose to establish for calendar year 1992 a total quantity and respective territorial shares as shown in the following table:

Virgin Islands	3,700,000
Guam	1,000,000
American Samoa	500,000
Northern Mariana Islands	500,000
Total	5,700,000

Compared with the total quantity established for 1991 (56 FR 9621; March 7, 1991), this amount would be a decrease of 500,000 units. The proposed Virgin Islands territorial share would be lowered by 500,000. The proposed shares for Guam, American Samoa, and the Northern Mariana Islands would not change.

Our reasons for proposing these amounts are as follows:

1. There are no producers in American Samoa and the Northern Mariana Islands. This proposal would leave these territories' shares at the minimum required by the statute.

2. There is only one producer in Guam, and the amount we propose is consistent with the needs of the existing producer along with a set-aside of 200,000 units for possible allocation to new firms in Guam.

3. We do not expect total Virgin Islands shipments in 1992 to exceed 3.5 million units. The amount we propose is consistent with the anticipated needs of the existing producers along with a set-aside of 200,000 units for possible allocation to new firms in the Virgin Islands.

Classification: Executive Order 12291. In accordance with Executive Order 12291 (46 FR 13193, February 19, 1981), the Departments of Commerce and the Interior have determined that this rule does not constitute a "major rule" as defined by section 1(b) of the Order. It is not likely to result in:

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

(2) A major increase in costs or prices for consumers, individuals industries,

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

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

Therefore, preparation of a Regulatory Impact Analysis is not required.

This regulation was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the General Counsel of the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities. Fewer than ten entities are directly affected by this action. The commerical benefits of the program governed by these regulations, for entities both directly and indirectly affected, are less than $10 million per year.

Paperwork Reduction Act. This rulemaking involves information collection activities subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq, which are currently approved by the Office of Management and Budget under control numbers 0625-0040 and 0625-0134. The proposed amendments will not increase the information burden on the public.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, we propose to amend 15 CFR part of 303 as follows:

PART 303—[AMENDED]

1. The authority citation for part 303 continues to read as follows:

Authority: Pub. L. 97-446, 96 Stat. 2329, 2331 (19 U.S.C. 1202 note); Pub. L. 94-241, 90 Stat. 263 (48 U.S.C. 1681, note).

§ 303.14 [Amended]

2. Section 303.14(e) is amended by removing "4,200,000" and adding "3,700,000" in its place.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Stella G. Guerra,

Assistant Secretary for Territorial and International Affairs.

[FR Doc. 92-206 Filed 1-3-92; 8:45 am]

BILLING CODE 3510-DS-M

BILLING CODE 4310-93-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[RM91-11-000]

18 CFR Part 284

Pipeline Service Obligations and Revisions To Regulations Governing Self-Implementing Transportation; Technical Conference

Issued December 27, 1991.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of technical conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is convening a technical conference to afford the natural gas industry and the public an opportunity to discuss with the Commission staff issues with respect to operational aspects of the Commission's July 31, 1991 Notice of Proposed Rulemaking in Docket No. RM91-11-000. In specific, interested persons are invited to respond to staff questions regarding the pipeline industry's ability to provide a delivery service on demand if the Commission adopts its proposal to mandate the unbundling (*i.e.*, separation) of pipeline sales and transportation services except for small customers.

DATES: The public conference will be held January 22, 1992, at 9:30 a.m. Requests to speak should be received by the Commission on or before January 10, 1992. Written responses must be filed with the Commission on or before January 17, 1992.

ADDRESSES: The conference will be held in the Commission's Hearing Room Number 1, 810 First Street, NW., Washington, DC. All requests to speak should identify the name of the speaker and the group represented, refer to Docket No. RM91-11-000, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Braunstein, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-2114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capital Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's Copy Contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capital Street, NE., Washington, DC 20426.

I. Introduction

The Commission is convening a technical conference to afford an opportunity for the natural gas industry and the public to discuss with the Commission staff issues with respect to operational aspects of the Commission's July 31, 1991 Notice of Proposed Rulemaking (NOPR).[1] The conference will be held in the Commission's Hearing Room No. 1, 810 First Street, NE., Washington, DC, on January 22, 1992, at 9:30 a.m.[2]

II. Purpose of the Conference

Among other things, the NOPR proposes to require interstate pipelines to unbundle (*i.e.*, separate) their sales and transportation services with one exception for continued bundled sales to

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under part 284 of the Commission's Regulations, 56 FR 38,372 (Aug. 13, 1991), FERC Stats. & Regs. (Proposed regulations) ¶ 32,460 (1991).

[2] The Commission notes that on December 19, 1991, the Interstate Natural Gas Association of America, the American Gas Association, the Associated Gas Distributors, the United Distribution Companies, and the American Public Gas Association proposed that a technical conference be convened on the NOPR's operational aspects.

small customers.[3] A number of commenters have raised the issue of the impact of mandatory unbundling on the pipeline industry's ability to continue to provide a reliable service, especially during peak periods. For instance, some commentors are concerned that a "no-notice" type of service may no longer be available. That service permits the pipelines to deliver gas without advance notice in response to increased customer demand caused, for example, by a sudden unexpected change in temperature.

The main purpose of the conference is to obtain additional information on pipeline operations in order to analyze operational issues associated with the Commission's unbundling proposal. The Appendix to this notice sets forth the questions that should be addressed by interested persons. Other related operational matters may be discussed. This conference is not intended to hear a person's arguments for or against the proposal. There should be no discussion of policy or legal matters.

III. Procedures

Persons desiring to make an oral presentation must file a request to speak. Persons with common points of view are urged to appoint a single spokesperson for oral presentations. The request to speak should be filed with the Secretary on or before January 10, 1992. Requests to speak should identify the name of the speaker and the group represented and the questions upon which the speaker wants to make a presentation. The speaker must have sufficient knowledge about the operations of pipeline systems to be able to answer technical questions. The Commission may not be able to accommodate all requests to participate in the conference. However, the Commission will seek to ensure that all segments of the industry are adequately represented. The requests should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, and should refer to Docket No. RM91-11-000. The Commission invites (but does not require) written responses from any interested person on the questions set forth in the appendix. An original and 14 copies of the written responses must be filed with the Commission on or before January 17, 1992, and should be no longer than 30 pages, double-spaced typing, excluding documentation necessary to support answers.

Finally, the Commission expects to consider the final rule in this proceeding shortly after this technical conference is held. Written responses filed after January 17, 1992 will be rejected. In addition, the Commission will not establish any procedures for further written filings after the technical conference. Along these same lines, in order to keep on the current schedule, no request to postpone or delay the conference will be entertained. Simply put, the Commission does not intend to delay issuance of the final rule because of the conference.

Linwood A. Watson, Jr.,

Acting Secretary.

Appendix—Questions To Be Addressed in Technical Conference

(All answers must be documented to the extent possible. Any examples must be in sufficient detail to be replicated by staff.)

Some of the comments on the NOPR claim various operational concerns related to the unbundling proposal. The Commission would like the parties to address whether such operational concerns are probable under the proposal and, if so, what mechanisms can be developed to avoid or reduce such concerns. At the technical conference the parties should specifically address the following:

1. What resources (*e.g.*, communications systems, facilities) are required by a pipeline to provide a bundled "no-notice" sales service?

2. What resources are required to provide a "no-notice" delivery service by an unbundled pipeline? Do these resources differ from those required to provide a bundled "no-notice" sales service and, if so, what would be the costs? Provide estimates of the costs of what additional resources would be needed to provide a "no-notice" delivery service by an unbundled pipeline.

3. What formal or informal operating arrangements or cooperative agreements among a pipeline, its customers and its suppliers are necessary to provide a bundled "no-notice" sales service? How would these differ for a "no-notice" delivery service on unbundled pipelines?

4. How valid are the problems cited in connection with the scheduling of gas under unbundled services and, to the extent valid, how can they be managed?

(a) Is it necessary that shippers be required to schedule gas receipts at specific locations to provide for orderly system operations, and, if so, how should that be done?

(b) Is it necessary that shippers adjust their gas receipt scheduling to pack the line for "no-notice" delivery service, and, if so, how should that be done?

(c) Is it necessary that pipelines have the right to control shipper receipt points through "operational flow orders" as necessary for system integrity, and, if so, when and how should that be done?

(d) How can "agency" arrangements reduce problems associated with uncoordinated shipper scheduling of gas?

(e) Is it necessary to have different arrangements between shippers and their suppliers to ensure adequate gas supplies to meet "no-notice" delivery service. If so, what types of different arrangements would be needed and what would it cost to provide for such arrangements?

5. How valid are the problems cited in connection with open-access storage and, to the extent valid, how should they be managed? Address the impact of different pipeline systems' configurations.

(a) Does any system storage need to be retained for "no-notice" delivery services, and imbalance and line pack management and, if so, how much and under what circumstances?

(b) Under what circumstances, if any, should access to system storage be provided on an aggregate, system-wide basis rather than by individual field? To what extent, if any, would supply area diversification be affected by such access on an aggregate, system-wide basis? If there are such circumstances, would some combination of aggregate, system-wide storage and individual field storage address valid concerns?

(c) To what extent, and under what circumstances, are injection and withdrawal cycle requirements necessary for proper reservoir management and how should these be reflected in tariff provisions?

6. What mechanisms have been employed by pipelines who have already unbundled (*i.e.*, El Paso, Northwest, Transwestern, and Transco) to avoid the problems cited by some parties in their comments?

(a) How is "no-notice" or limited notice delivery service being provided?

(b) How much storage, if any, has been reserved for imbalance and system management purposes?

(c) How are transportation imbalances managed?

(d) Is contract storage available, and on what basis?

(e) What additional facilities have been necessary and what costs have been incurred to achieve this unbundling?

7. Do transportation-only pipelines (*e.g.*, Northern Border, HIOS, and

[3] In general, the NOPR proposes that unbundling will occur by moving the point of pipeline sales upstream in or near the production area.

Trailblazer) provide "no notice" or limited notice delivery service? Have those pipelines experienced the problems cited in the comments and, if so, how valid are the alleged concerns about supply failure. What mechanisms are employed to avoid or reduce the problems?

8. What measures are appropriate to deal with supply failure situations?

(a) Are pre-allocation arrangements at supply-short receipt points effective at managing imbalances? If not, why and how can they be made more effective?

(b) Are current penalties effective in managing imbalances in supply failure situations? If not, why not and how can they be made more effective?

(c) If a supply shortage is traced to an individual shipper can the pipeline control the shipper's deliveries through either physical control or penalties in a timely manner? If not, why not and what effective means of control can be used?

(d) How can the timely reallocation of gas between shippers in a shortage situation be accomplished? What should be the appropriate role of the pipeline and shippers in such reallocation?

(e) How often have shippers refused to reduce takes in shortage situations? How has this affected the system operations? How often have pipelines misappropriated third party gas supplies for system supply sales in shortage situations?

9. Some commenters claim that pipelines providing bundled service can deliver gas because of their control of multiple receipt points. During peak periods, how much additional gas can be delivered because of this control? How valid are concerns about potential loss on unbundled pipelines of throughput now transported by displacement transactions? If the concerns are valid, what steps could be taken on unbundled pipelines to minimize such potential loss?

10. How valid are concerns that bundled pipelines need significantly less mainline and storage capacity then unbundled pipelines because of demand diversity among customers? If valid, what procedures can be instituted on unbundled systems to maximize economies of diversity?

11. Are there significant economies of scope in pipelines' current operations? Provide examples and estimates of cost savings. Would these be affected by unbundling? If so, how and why?

12. Currently, the coordination of multiple pipeline interactions is a factor in system operations.

(a) What problems exist today, and how are they handled?

(b) Would these interactions be affected by unbundling? If so, how and why?

(c) Please discuss specific operational problems that could restrict multiple pipeline transactions. For example, would any operational problems limit third parties from arranging point-to-point transactions between hubs or pooling points across several pipelines thus reducing pipeline coordination?

(d) What can be done to implement these transactions?

13. Can the pipeline provide an unbundled "no-notice" delivery service by simply retaining responsibility for packing the line in the production area or from storage treating the line pack as a physical asset similar to plant?

14. To what extent should the Commission try to differentiate between differing pipeline configurations (*i.e.*, web, bridge, and long-line) in a generic rulemaking?

(a) Are there operational barriers that arise between differently configured pipelines which may limit third party transactions across two or more pipelines and, if so, how should the Commission address such barriers?

(b) What provisions should the Commission adopt that would allow parties in the restructuring proceedings to overcome such barriers?

15. Are there operational factors that interfere with other non-pipeline merchants performing "no-notice" delivery service?

(a) If there is an adequate communication system to coordinate transactions among all market participants, can non-pipeline merchants provide "no-notice" delivery service? What communication systems exist today? Are they effective, and if not, why not?

(b) What distinguishes the natural gas industry from the electric industry, which has implemented communications systems to coordinate transactions?

16. Can "no-notice" delivery service and similar issues be addressed in the context of curtailment provisions in individual pipeline tariff provisions resulting from restructuring negotiations?

17. With respect to unbundled gas storage issues, what operational problems cannot be overcome by changing accounting procedures to accommodate for engineering limits on injection and withdrawal facilities together with reservoirs?

18. Are any operational problems presented by downstream pipelines unbundling services prior to unstream pipelines unbundling of services?

[FR Doc. 92-135 Filed 1-3-92; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915 and 1926

[Docket No. H-71]

RIN 1218-AA98

Occupational Exposure to Methylene Chloride

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; corrections.

SUMMARY: This notice corrects errors that appeared in the Notice of Proposed Rulemaking (NPRM) for Occupational Exposure to Methylene Chloride that the Occupational Safety and Health Administration (OSHA) published on November 7, 1991 (56 FR 57036).

DATES: Comments and requests for a hearing concerning the proposed standard must be postmarked on or before April 6, 1992.

ADDRESSES: Comments are to be submitted in quadruplicate to: The Docket Office, Docket No. H-71, United States Department of Labor, room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-7894.

Comments limited to 10 pages or less in length also may be transmitted by facsimile to (202) 523-5046 or 8-523-5046 (for FTS), provided that the original and 3 copies are sent to the Docket Office thereafter.

Requests for a hearing are to be submitted in quadruplicate to Mr. Tom Hall, OSHA, U.S. Department of Labor, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-8615.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, United States Department of Labor, room N-3641, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: On November 7, 1991, the Occupational Safety and Health Administration issued a notice of proposed rulemaking (NPRM) for occupational exposure to methylene chloride (56 FR 57036). Two errors were introduced into the

preamble of the NPRM during the process of editing the document for publication. In the first instance, OSHA inadvertently failed to revise Table 18 and Table 19 in the Summary of Preliminary Regulatory Impact and Regulatory Flexibility Analysis so that they reflected the corresponding text (56 FR 57108) regarding the benefits of a revised standard. Those tables, which appeared at 56 FR 57109 and 57110, are corrected to read as follows:

TABLE 18.—REDUCTIONS IN EXCESS CANCER DEATHS OVER 45 YEARS BY ADOPTING 50 PPM STANDARD

Application group	PELs (PPM)	Exposures: Current and expected arithmetic mean (PPM)	Directly exposed workers	Expected excess deaths	Reduction in deaths
Manufacture of MC	500	9.14	124	0.10	
	50	9.14	124	0.10	0.00
Distribution/Formulation of solvents	500	40.18	2,245	8.04	
	50	21.09	2,021	3.80	4.24
Metal Cleaning:					
Cold Degreasing and Other Cold Cleaning	500	26.88	90,293	216.52	
	50	12.38	45,147	49.89	166.63
Open Top Vapor Degreasing	500	115.70	271	2.79	
	50	49.77	244	1.08	1.71
Conveyorized Vapor Degreasing	500	115.70	177	1.82	
	50	36.79	159	0.52	1.30
Aerosol Packing	500	143.34	2,182	27.76	
	50	32.79	1,964	5.74	22.02
Paint and Paint Remover Formulation:					
Paint Remover Formulation	500	23.34	760	1.58	
	50	18.08	684	1.10	0.48
Paint Manufacture	500	11.67	1,808	1.88	
	50	11.34	904	0.92	0.96
Paint Stripping (PS):					
PS—Large Aircraft Firms	500	58.13	1,671	8.65	
	50	29.82	836	2.22	6.43
PS—Small Aircraft Firms	500	58.13	799	4.14	
	50	16.73	400	0.60	3.54
PS—Furniture	500	126.17	5,720	64.11	
	50	29.53	5,148	13.56	50.55
PS—Industrial	500	70.35	6,942	43.49	
	50	26.96	3,471	8.35	35.14
Electronics:					
Semiconductors	500	46.89	3,888	16.25	
	50	19.21	3,888	6.67	9.58
Printed Circuit Boards	500	46.89	832	3.48	
	50	20.51	832	1.52	1.96
Foam Blowing/Pastics:					
Foam Blowing	500	30.10	1,169	3.14	
	50	18.56	1,169	1.94	1.20
Other Plastics/Adhesives	500	29.51	2,546	6.70	
	50	17.03	2,292	3.48	3.22
Ink Use (Printing):					
Ink Solvent Manufacturing	500	40.18	143	0.51	
	50	20.72	14	0.03	0.48
Ink Solvent Use (Blanket Wash)	500	24.17	34,868	75.19	
	50	13.44	3,487	4.18	71.01
Pesticide Formulation	500	40.18	120	0.43	
	50	19.86	120	0.21	0.22
Pharmaceuticals	500	154.87	1,007	13.84	
	50	40.78	1,007	3.66	10.18
Solvent Recovery	500	3.83	161	0.06	
	50	3.83	161	0.06	0.00
Film Base	500	35.80	700	2.23	
	50	29.60	700	1.85	0.38
Polycarbonates	500	3.88	67	0.02	
	50	3.88	67	0.02	0.00
Construction	500	57.68	24,896	127.94	
	50	17.24	19,917	30.64	97.30
Shipyards	500	139.65	3,040	37.69	
	50	7.26	2,432	1.58	36.11
Total, all 25 application groups	500	35.75	186,429	668.36	
	50	16.74	97,187	143.73	524.64
Average annual reduction					11.66

Sources: CONSAD, Crump Report, Office of Regulatory Analysis

TABLE 19.—REDUCTIONS IN EXCESS CANCER DEATHS OVER 45 YEARS BY ADOPTING 25 ppm STANDARD

Application Group	PELs (PPM)	Exposures: Current and expected arithmetic mean (ppm)	Directly exposed workers	Expected excess deaths	Reduction in deaths
Manufacture of MC	500	9.14	124	0.10	
	25	1.75	124	0.02	0.08
Distribution/Formulation of Solvents	500	40.18	2,245	8.04	
	25	10.36	2,021	1.87	6.17
Metal Cleaning:					
Cold Degreasing and Other Cold Cleaning	500	26.88	90,293	216.52	
	25	6.47	45,147	26.08	190.44
Open Top Vapor Degreasing	500	115.70	271	2.79	
	25	4.77	244	0.10	2.69
Conveyorized Vapor Degreasing	500	115.70	177	1.82	
	25	12.15	159	0.17	1.65
Aerosol Packing	500	143.34	2,182	27.76	
	25	6.32	1,964	1.11	26.65
Paint and Paint Remover Formulation:					
Paint Remover Formulation	500	23.34	760	1.58	
	25	4.04	684	0.25	1.33
Paint Manufacture	500	11.67	1,808	1.88	
	25	4.01	904	0.32	1.56
Paint Stripping (PS):					
PS—Large Aircraft Frims	500	58.13	1,671	8.65	
	25	9.57	836	0.71	7.94
PS—Small Aircraft Firms	500	58.13	799	4.14	
	25	14.03	400	0.50	3.64
PS—Furniture	500	126.17	5,720	64.11	
	25	8.40	5,148	3.86	60.25
PS—Industrial	500	70.35	6,942	43.49	
	25	7.72	3,471	2.39	41.10
Electronics:					
Semiconductors	500	46.89	3,888	16.25	
	25	2.60	3,888	0.90	15.35
Printed Circuit Boards	500	46.89	832	3.48	
	25	6.64	832	0.49	2.99
Foam Blowing/Plastics:					
Foam Blowing	500	30.10	1,169	3.14	
	25	5.47	1,169	0.57	2.57
Other Plastics/Adhesives	500	29.51	2,546	6.70	
	25	4.37	2,292	0.89	5.81
Ink Use (Printing):					
Ink Solvent Manufacturing	500	40.18	143	0.51	
	25	10.43	14	0.01	0.50
Ink Solvent Use (Blanket Wash)	500	24.17	34,868	75.19	
	25	4.29	3,487	1.34	73.85
Pesticide Formulation	500	40.18	120	0.43	
	25	2.78	120	0.03	0.40
Pharmaceuticals	500	154.87	1,007	13.84	
	25	4.54	1,007	0.41	13.43
Solvent Recovery	500	3.83	161	0.06	
	25	3.83	161	0.06	0.00
Film Base	500	35.80	700	2.23	
	25	21.54	700	1.35	0.88
Polycarbonates	500	3.88	67	0.02	
	25	3.88	67	0.02	0.00
Construction	500	57.68	24,896	127.94	
	25	5.91	19,917	10.51	117.43
Shipyards	500	139.65	3,040	37.69	
	25	2.22	2,432	0.48	37.21
Total, All 25 Application Groups	500	35.75	186,429	668.36	
	25	6.51	97,187	54.46	613.90
Average Annual Reduction					13.64

Sources: CONSAD, Crump Report, Office of Regulatory Analysis.

In the second instance, the Public Participation section of the NPRM (56 FR 57128) did not provide the requisite notice that interested persons have the right to file objections to the proposal and request an informal hearing. The Public Participation section is corrected to read as follows:

XIII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposed standard. These comments must be postmarked on or before April 6, 1992, and submitted to quadruplicate to the Docket Officer, Docket No. H-71, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Comments limited to 10 pages or less also maybe transmitted by facsimile to 202-523-5046 or FTS 8-523-5046, provided the original and three copies are sent to the Docket Office thereafter. Written submissions must clearly identify the provisions of the proposal which are addressed and the

position taken with respect to each issue.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions will be made a part of the record of the proceeding.

Additionally, under section 6(b)(3) of the OSH Act (29 U.S.C. 655), section 107 of the Construction Safety Act (41 U.S.C. 333), and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Officer at the address above and must comply with the following conditions:

1. The objections must include the name and address of the objector;
2. The objections must be postmarked by April 6, 1992.
3. The objections must specify with particularity the provisions of the proposed rule to which each objection is taken and must state the grounds therefor;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655); Secretary of Labor's Order 1-90 (55 FR 9033); and 29 CFR part 1911.

Signed at Washington, DC, this 18th day of December, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 92-104 Filed 1-3-92; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 911211-1311]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed catch sharing plan in Area 2A and request for comments.

SUMMARY: NOAA announces and requests comments on the proposed 1992 Catch Sharing Plan developed by the Pacific Fishery Management Council (Council) to allocate the catch of Pacific halibut between treaty Indian and non-Indian commercial and recreational fishermen off the coasts of Washington, Oregon, and California. The proposed 1992 Catch Sharing Plan allocates the total allowable catch of Pacific halibut in Area 2A between domestic users in accordance with the Northern Pacific Halibut Act of 1982. The purpose of this notice is to solicit public comments on the proposed plan before approval by the Secretary of Commerce and implementation by the IPHC.

DATES: Comments must be received by January 21, 1992.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (Halibut Act), Public Law 97-176, 16 U.S.C. 773c(c) authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the allocation of Pacific halibut catch in U.S. Convention waters, which are in addition to, but not in conflict with, the regulations of the International Pacific Halibut Commission (IPHC). The geographic area herein involved is all U.S. marine waters lying south of the U.S.-Canada border, including the Straits of Juan de Fuca and Puget Sound, known as IPHC statistical Area 2A.

The potential Pacific halibut harvest in Area 2A by the non-Indian commercial fishery, recreational fisheries and treaty Indian tribes now exceeds the total allowable catch (TAC) for Area 2A. Because the effort and catch by the three user groups needs to be controlled and reduced to meet conservation goals established by the IPHC, Catch Sharing Plans that allocate the TAC in Area 2A have been developed each year since 1988. The Council developed a Catch Sharing Plan in 1990 that was approved by the Secretary for continuation into 1991 (56 FR 18533; April 23, 1991) and implemented by IPHC regulations (56 FR 18533; April 23, 1991). The Plan allocated 25 percent of the Area 2A TAC to 12 Washington treaty Indian tribes, with the tribe's share to be taken in subarea 2A-1 (the tribes' usual and accustomed fishing grounds), and 75 percent to non-Indian fishermen. The allocation among non-Indian fishermen was divided 50 percent to commercial users and 50 percent to recreational users. The recreational allocation was further divided 61 percent to areas off Washington and 39 percent to areas off Oregon and California.

For 1992, the Council developed five alternatives for allocating halibut at its September 1991 public meeting. Development of the treaty Indian/non-Indian allocation alternatives was based on input from a Halibut Managers Group consisting of state, Federal, and tribal fishery managers. The proposed allocations between and within commercial and recreational user groups were based on rcommendations from halibut advisory groups and the public developed during public meetings convened by the States of Washington, and Oregon prior to the September Council meeting. The alternatives were distributed by the Council for public comments to be considered at its November 1991 public meeting. The States also convened subsequent meetings with halibut advisors on the alternatives adopted by the Council and presented the results of their meetings at the Council's November 1991 public meeting.

The alternatives considered by the Council at its November 1991 public meeting, including the preferred alternative, are described below. Under each alternative, the Washington recreational allocation applies to the coastal and inland waters off Washington and includes the north coast of Oregon, north of Cape Falcon; the Oregon recreational allocation applies to waters off Oregon south of Cape Falcon and includes the California coast. The tribal ceremonial and subsistence fishery is included in the treaty Indian share as a sub-quota under each of the alternatives. The Council also requested public input on recreational geographic areas, bag limits, seasons, and distribution of catch under each alternative.

Alternative 1. (Preferred Alternative) This alternative (status quo) provides for an allocation of 25 percent of the Area 2A TAC to treaty Indian tribes for harvests in subarea 2A-1, and 75 percent to non-Indian fishermen. The allocation among non-Indian fishermen would be divided 50 percent to commercial users and 50 percent to recreational users. The recreational allocation would be further divided 61 percent to areas off Washington and 39 percent to areas off Oregon and California.

Alternative 2. This alternative provides for an allocation of 25 percent of the Area 2A TAC to treaty Indian

tribes in subarea 2A-1 and 75 percent to non-Indian fishermen. The allocation among non-Indian fishermen would be divided ⅓ to commercial users and ⅔ to recreational users. The recreational allocation would be divided equally between Washington and Oregon. This alternative would result in an equal sharing of the overall TAC between treaty Indian, non-Indian commercial, Oregon recreational and Washington recreational users with each group receiving 25 percent of the Area 2A TAC. The commercial fishery would be restricted to waters off Oregon and California.

Alternative 3. This alternative provides for an allocation of 25 percent of the Area 2A TAC to treaty Indian tribes in subarea 2A-1, and 75 percent to non-Indian fishermen. The non-Indian allocation would be divided ⅓ to commercial users and ⅔ to recreational users. The recreational allocation would be 50 percent of the overall TAC and would be divided 60 percent to Washington and 40 percent to Oregon. The resulting sharing of the overall TAC would be 25 percent to treaty Indian, 25 percent to non-Indian commercial, 30 percent to Washington recreational, and 20 percent to Oregon recreational users.

Alternative 4. This alternative provides for an allocation of 35 percent of the Area 2A TAC to treaty Indian tribes in subarea 2A-1, and 65 percent to non-Indian fishermen. The allocation between non-Indian commercial and Washington/Oregon recreational users is the same as Alternative 2. The overall sharing of the TAC would be 35 percent treaty Indian and equal sharing of the non-Indian TAC between commercial, Oregon recreational and Washington recreational users with each receiving 21.7 percent. The commercial fishery would be restricted to waters off Oregon and California.

Alternative 5. This alternative provides for an allocation of 35 percent to treaty Indian tribes in subarea 2A-1, and 65 percent to non-Indian fishermen. This alternative is similar to Alternative 3 except that the increased 10 percent to treaty Indian fishermen would be taken from the non-Indian commercial allocation. The overall sharing of the TAC would be 35 percent treaty Indian, 15 percent non-Indian commercial, 30 percent Washington recreational, and 20 percent Oregon recreational.

At its November 1991 public meeting, the Council reviewed the potential social and economic aspects of the alternatives and their impacts on treaty Indian and non-Indian commercial and recreational users. An analysis of the alternatives (Regulatory Impact Review) indicated that none of the alternatives would result in substantial net economic increases overall, but rather just shifted the benefits between user groups. The Council also received a report from its Scientific and Statistical Committee on the distribution of halibut biomass in Area 2A and the comparable distribution of harvest effort. The Council considered whether the harvests should be directed to areas of greater biomass, but did not pursue this for 1992. The Council requested its advisory bodies to review this issue further and provide input to the Council in 1993 and beyond. With regard to the commercial fishery, the Council also discussed restructuring the fishery from a directed longline fishery to an incidental catch regime in the salmon troll or sablefish longline fisheries. This issue also was deferred to the future to allow advisory bodies the opportunity for further review. After review of the results of the analysis and consideration of comments from the States and the public, the Council voted to recommend the status quo as the preferred allocation alternative (Alternative 1) for 1992 only. The Council also announced that it is considering an Individual Quota (IQ) system for the Pacific halibut fishery and that fishing activity occurring after November 13, 1991, may not be considered in determining priorities for future participation in the fishery or amount of IQ's issued. A notice of this limited access control date will be published in the **Federal Register** separately from this action.

Proposed 1992 Catch Sharing Plan

The proposed 1992 Catch Sharing Plan (Plan) allocates 25 percent of the Area 2A TAC to Washington treaty Indian tribes in subarea 2A-1, and 75 percent to non-Indian fishermen. The allocation among non-Indian fishermen is divided 50 percent to commercial users and 50 percent to recreational users. The recreational allocation is further divided 61 percent to areas off Washington and 39 percent to areas off Oregon and California. This Plan would distribute the IPHC staff recommended 1992 TAC of 650,000 pounds (294.8 metric tons) in Area 2A as sub-quotas between users as follows.

	Pounds
Treaty Indian sub-quota	162,500 (73.7 mt)
Non-Indian:	
Commercial sub-quota	243,750 (110.6 mt)
Washington Recreational sub-quota	148,687 (67.4 mt)
Oregon Recreational sub-quota	95,063 (43.1 mt)
Total	650,000 (294.8 mt)

Recreational Fisheries

The non-Indian recreational users would be allocated 37.5 percent of the Area 2A TAC. The recreational allocation would be further divided with 22.9 percent of the Area 2A TAC to areas off Washington and 14.6 percent to areas off Oregon. The recreational fisheries are proposed to be divided into five geographic areas, each having separate seasons, quotas, bag limits, and other restrictions as necessary. The Washington recreational allocation would apply to the coastal and inland waters off Washington and includes the north coast of Oregon, north of Cape Falcon. The Oregon recreational allocation would apply to waters off Oregon south of Cape Falcon and includes the California coast. The details of the proposed recreational fisheries structures for the five areas, one of which is divided into two regions, are as follows. The specific dates for each season will be determined in consultation with the IPHC after the Area 2A TAC is announced to ensure that the harvests do not exceed the recreational sub-quotas.

1. *Washington inside waters;* Puget Sound and United States waters in the Strait of Juan de Fuca, east of a line from Bonilla Point (latitude 48°35'44" N., longitude 124°43'00" W.) to Tatoosh Island (latitude 48°23'30" N., longitude 124°44'00" W.) to Cape Flattery (latitude 48°22'55" N., longitude 124°32'42" W.).

Thirty to thirty-five percent of the Washington recreational sub-quota would be allocated to this area. The daily bag limit would be two halibut per person per day with no size limit. Two seasons would be scheduled; an early May to mid-June season that is open 6 days per week, and a mid-June to late June season that is open 2 days per week (Saturdays and Sundays only).

2. *Washington north coast;* west of the line described above and north of the Queets River (latitude 47°31'42" N.).

Sixty to sixty-five percent of the Washington recreational sub-quota would be allocated to this area. The daily bag limit would be one halibut per person per day with no size limit. Three seasons would be scheduled, each with a sub-quota: the first season would commence in early May and would continue until about 85 percent of the area sub-quota is taken; the second season would commence in early July and would be open every Friday and Saturday until about 12 percent of the area sub-quota is taken; and the third season would commence in late August and would be open every day until the

remaining 2 percent of the area sub-quota is taken.

3. *Southern Washington/northern Oregon;* between the Queets River and Cape Falcon (latitude 45°46'00" N.).

Three to eight percent of the Washington recreational sub-quota would be allocated to this area for a continuous season. The season would commence in early May and would continue until late September. The daily bag limit would be one halibut per person per day with no size limit.

4. *Oregon—South of Cape Falcon and north of the California border* (latitude 42°00'00" N.).

Sixty-five to seventy percent of the Oregon recreational sub-quota would be allocated to an early May opening in this area that is divided into two regions each with a sub-quota. The region south of Cape Falcon and north of the Nestucca River (latitude 45°09'45" N.) would have an early May opening for a season that continues in this region until about 2 to 4 percent of the Oregon recreational sub-quota is taken. The region south of Nestucca River and north of California border would have an early May opening for a season that continues in this region until about 60 to 65 percent of the Oregon recreational sub-quota is taken. The daily bag limit in both regions would be two halibut per person per day, one with a minimum 32-inch size limit and the second with a minimum 50-inch size limit.

Thirty to thirty-five percent of the Oregon recreational sub-quota would be allocated to the entire area for two later seasons, each with a sub-quota. The first season would commence in early July in the area inside the 30 fathom curve and would continue until 9 to 12 percent of the area sub-quota is taken. The second season would commence in early August, with no depth restrictions, and would continue until 20 to 29 percent of the area sub-quota is taken. The daily bag limit would be two halibut per person per day, one with a minimum 32-inch size limit and the second with a minimum 50-inch size limit.

5. *California—South of the California border.*

This area would be allocated 2.6 percent of the Oregon recreational sub-quota for a continuous season. The season would commence in mid-May and continue until mid-September. The daily bag limit would be one halibut per person per day with a minimum 32-inch size limit.

The determination of the specific area sub-quotas and dates for these recreational fisheries will be based on public comments, on consultations with the IPHC to ensure that the seasonal structuring does not result in quota overages, and on the following Council objectives for recreational fishery structuring in each State.

The Washington recreational structuring will be based on the following objectives:

1. Provide a stable recreational opportunity for anglers in inside waters, and provide incentive to anglers to fish in Puget Sound with the two-fish limit.

2. Maximize the season length for viable fishing opportunity on the remote halibut grounds off northwest Washington and stagger the seasons to spread out this opportunity to maximize the benefit to anglers who utilize these grounds.

3. On the south coast, an area of relatively low abundance of halibut, provide for the opportunity for anglers to retain halibut caught incidental to other target species.

The Oregon recreational fisheries structuring will be based on the following objectives:

1. Provide special opportunity for anglers out of Pacific City and Garibaldi, where a long-standing relatively small fishery has existed.

2. Provide early opportunity to anglers along the central and south coast especially Newport anglers. The delayed opening (previously April 1) will give private boat anglers more chance at this sub-quota.

3. Provide opportunity for all Oregon ports south of Cape Falcon especially small boat anglers.

4. Provide a short period of opportunity for all ports south of Cape Falcon and allow charterboats and larger private boats to fish productive areas in deeper water off Newport.

5. Provide anglers in California the opportunity to fish in a fixed season.

Treaty Indian Fisheries

Twenty-five percent of the Area 2A TAC would be allocated to 12 treaty Indian tribes for tribal commercial and ceremonial and subsistence (C&S) fisheries in subarea 2A-1 as defined in 50 CFR 301.19(c). The tribal C&S fishery, which is expected to take about 10,000 pounds (4.5 metric tons), would commence on January 1 and continue year-round. No size or bag limits would apply to the C&S fishery except during those periods that the commercial fishery is closed when treaty Indians may take and retain not more than two halibut per day per person. The commercial fishery would be allocated a sub-quota that is equal to the tribal allocation less the tribal estimate of C&S catch. The tribal commercial fishery would commence in early March and continue until the tribal commercial fishery sub-quota is taken. Harvest of halibut for sale by treaty Indians during the commercial fishing season would be subject to the gear and size restrictions that apply to non-Indian commercial fishermen. Halibut taken for ceremonial and subsistence purposes could not be offered for sale or sold.

Commercial Fisheries

The non-Indian commercial fisheries would be allocated 37.5 percent of the Area 2A TAC. The Plan does not address the structuring of the commercial season(s). The commercial fishery opening date, duration, and vessel trip limits for Area 2A will be determined by the IPHC as necessary to ensure that the sub-quota for this fishery is not exceeded.

A final 1992 Catch Sharing Plan will be approved by the Secretary after consideration of public comments. Specific regulations to implement the final plan will be developed by the IPHC at its annual meeting on January 27–30, 1992 in Seattle, Washington, consistent with its responsibilities under the international convention. The actual amounts of halibut allocated to each group may change if the IPHC establishes a TAC that is different than the anticipated 450,000 pounds TAC; however, the percentage for each group will remain the same.

Classification

While this 1992 Catch Sharing Plan is being published in proposed form with a request for public comments, it is a general statement of agency policy that does not require publication of a general notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553) or any other law. Consequently, the Regulatory Flexibility Act does not apply. A regulatory impact review prepared by the Council for the 1992 Plan to fulfill the requirements of E.O. 12291 indicates that actions taken under the plan are not "major" and the preparation of a Regulatory Impact Analysis is not required. An Environmental Assessment (EA) was prepared for the 1990 IPHC regulations incorporating the 1990 Catch Sharing Plan in accordance with the National Environmental Policy Act (NEPA), and the Assistant Administrator for Fisheries, NOAA, determined that there would be no significant adverse environmental impact resulting from the regulations and that preparation of an environmental impact statement was not required by section 102(2)(C) of NEPA or its implementing regulations. The environmental impacts of the proposed 1992 Catch Sharing Plan and alternatives are no different than those

evaluated in the 1990 EA and; therefore, this action is categorically excluded from the NEPA requirements to prepare another EA in accordance with NOAA Administrative Order 216-6, section 6.02a.3., because the alternatives and their impacts have not changed and the determination of no significant environmental impact would also apply to a 1992 Catch Sharing Plan. This action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612. Copies of the 1990 environmental assessment and the 1992 regulatory impact review are available from the Director (see ADDRESSES). This action has been determined to be consistent to the maximum extent practicable with applicable State coastal zone management programs and has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773-773k.

Dated: December 31, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-31339 Filed 12-31-91; 2:57 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 3
Monday, January 6, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Stride Environmental Impact Statement, Leary Compartment, Humboldt Co., CA

ACTION: Notice of intent.

SUMMARY: The USDA, Forest Service will prepare the Stride Environmental Impact Statement (EIS) which will analyze and disclose the environmental impacts of a site specific proposal to harvest and regenerate timber, and to construct associated roads within the Leary Compartment of the Orleans Ranger District, Six Rivers National Forest, Humboldt County, California. The Forest Service hereby gives notice of the environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision. The Forest Service invites written input concerning issues specific to the proposed action.

DATES: Any comments that are to be considered in the Draft Environmental Impact Statement (DEIS) must be received on or before February 29, 1992.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to John Larson, District Ranger, Orleans Ranger District, Drawer B, Orleans, CA, 95556.

FOR FURTHER INFORMATION CONTACT: Becky Bryan, Planning Forester. Orleans Ranger District, Drawer B, Orleans, CA, 95556, phone (916) 627-3291.

SUPPLEMENTARY INFORMATION: The project objectives are to harvest between 2 and 8 million board feet of sawtimber in such a way that maintains or enhances the longterm productivity of the existing ecosystems. The Leary Compartment encompasses approximately 5,000 acres in Townships 9 and 10 North, Range 5 East, Humboldt Base Meridian. This compartment is adjacent to the Red Cap Creek, a main tributary to the Klamath River, and encompasses all of Leary Creek. Prior timber management has resulted in the harvesting of 1,800 acres since 1955 and the construction of several miles of road. Opportunities for the enhancement of fisheries, water quality, and wildlife habitats will be considered. A reasonable array of alternatives will be analyzed. One of these will be "No Action", in which no timber harvest or road construction would occur. Other alternatives will consider various levels and locations of harvest and related road construction in response to the issues generated through scoping.

Public participation is a vital part of the process (40 CFR 1501.7). Federal, State, and local agencies, local residents, and other individuals or organizations who may be interested in or affected by the decision are hereby invited to participate in the scoping process. This process will be used to:

1. Identify the issues to be addressed.
2. Identify those issues to be analyzed in depth.
3. Eliminate insignificant issues or those which have been covered by previous environmental review.
4. Explore additional alternatives.
5. Identify potential environmental effects of the proposed action and the alternatives.

The proposed scoping process includes:

1. Written contact with local residents of Orleans, potential timber purchasers, and organizations and agencies that have expressed prior interest in timber management decisions on the Orleans Ranger District.
2. Posting of this Notice of Intent on the bulletin boards in Orleans, CA, and publishing this Notice in the Kourier newspaper, Willow Creek, CA.
3. Two public meetings will take place in the conference room of the Orleans Ranger Station located on Ishi Pishi Road near Highway 96 in Orleans, Ca. This first meeting will be held on January 8, 1992 at 7 p.m. The second meeting will be held on January 9, 1992 at 1 p.m.

James L. Davis, Jr., Forest Supervisor, Six Rivers National Forest, is the responsible official.

The analysis is expected to take about 6 months. The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and made available for public review by August 1992. At that time, EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the DEIS will be 45 days from the date that EPA's Notice of Availability appears in the **Federal Register.** It is very important that those interested in the management of the Leary Compartment participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of a DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553, (1978), and that environmental objections that could have been raised at the draft stage may be waived or dismissed if not raised until after completion of the Final Environmental Impact Statement (FEIS), *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022, (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends for the DEIS, the comments received will be analyzed and incorporated in the preparation of the FEIS. The FEIS is scheduled to be completed by December 1992. In the FEIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

Dated: December 23, 1991.

Jack R. Kahl,

Fish and Wildlife Staff Officer.

[FR Doc. 92-115 Filed 1-3-92; 8:45 am]

BILLING CODE 3410-11-M

RIN 0596-AB06

Recreation Residence Authorizations

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy; extension of public comment period.

SUMMARY: On October 10, 1991, at 56 FR 51260, the Forest Service gave notice of its intent to seek public comments on a draft revised policy for administering special use permits that authorize privately-owned recreation residences on National Forest System lands. The policy is being revised in response to an administrative appeal decision by the Assistant Secretary of Agriculture for Natural Resources and Environment. The comment period on this draft policy was to close on January 8, 1992. However, a number of individuals and organizations have indicated that the 90-day period was insufficient time to review and analyze the draft policy, particularly since the comment period encompassed the holiday period, and, therefore, have requested additional time to prepare comments. In addition, the Forest Service has found that some holders of recreation residence authorizations, in a mailing made to all holders by the agency's Washington Office, may not have received a copy of the October 10, 1991, notice. A follow up mailing has been made to those holders believed affected. Accordingly, the Forest Service has decided to extend the comment period an additional 60 days to March 8, 1992.

DATES: Comments must be received in writing and postmarked no later than March 8, 1992.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2720), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Questions about this proposed policy should be addressed to J. Kenneth Myers, Lands Staff, at the address above, or by calling (202) 205-1248.

Dated: December 30, 1991.

George M. Leonard,

Associate Chief.

[FR Doc. 92-136 Filed 1-3-92; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will be held from 9 a.m. until 5 p.m. on Friday, February 7, 1992, at the University Place Hotel, 850 West Michigan Street, Indianapolis, Indiana. The purpose of this meeting is for the Committee to discuss its report on hate crime and to plan a future project.

Persons desiring additional information should contact Hollis E. Hughes, Committee Chairperson at (219) 233-9305 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353-8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 27, 1991.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-150 Filed 1-3-92; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will be held from 9 a.m. until 5 p.m. on Thursday, January 23, 1992, at the Omni International Hotel, 333 E. Jefferson Avenue, Detroit, Michigan. The purpose of this meeting is for the Committee to discuss its report on hate crimes and to plan a future project.

Persons desiring additional information should contact Dennis L. Gibson, Committee Chairperson at (313) 863-9394 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 352-8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 27, 1991.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-151 Filed 1-3-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-806]

Electrolytic Manganese Dioxide From Japan; Final Scope Ruling

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Preliminary scope ruling.

SUMMARY: In response to a July 7, 1989, request to exclude high-grade chemical manganese dioxide (CMD-U) produced by Chuo Denki Kogyo Co., Ltd. (Chuo Denki) from the scope of the antidumping duty order on electrolytic manganese dioxide (EMD) from Japan, the Department of Commerce (the Department) issued a preliminary ruling that CMD-U is a later-developed product within the scope of the antidumping duty order on EMD from Japan. 56 FR 56977 (November 7, 1991). The Department hereby reaffirms its preliminary ruling.

EFFECTIVE DATE: January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Carlo Cavagna or Melissa Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4474 and 377-4851, respectively.

SUPPLEMENTARY INFORMATION: On July 7, 1989, the Department received a request from Sumitomo Corporation of America (SCOA) to clarify the scope of the outstanding duty order on EMD from Japan by ruling that CMD-U is outside the scope of the order. By letter of July 17, 1989, we invited interested parties to comment on SCOA's request. We received comments from Petitioners, Kerr-McGee Chemical Corporation (KMCC) and Chemetals, Inc. (Chemetals), arguing that CMD-U is a later-developed product that, based on an analysis of the criteria specified in 19 U.S.C. 1677j(d), is within the scope of the order. We received rebuttal comments from SCOA and Chuo Denki arguing that CMD-U is not a later-developed product and that all grades of CMD

should be determined to be outside the scope of the antidumping order on EMD because CMD was excluded from the original investigation. By letter of June 5, 1990, Petitioners suggested that the later-developed product issue must be decided before ruling on SCOA's exclusion request.

On November 7, 1991, the Department published a preliminary determination in the **Federal Register**. Electrolytic Manganese Dioxide From Japan; Preliminary Scope Ruling, 56 FR 56977 (November 7, 1991). In this determination, the Department found that CMD–U was a later-developed product within the scope of the order and invited interested parties to comment within thirty days. The Department did not receive any comments from interested parties. In accordance with section 781(e) of the Tariff Act of 1930, as amended, the Department also notified the International Trade Commission (ITC) of its preliminary determination. By letter of December 3, 1991, the ITC notified the Department that consultations concerning the proposed inclusion of CMD–U in the scope of the order on EMD from Japan would not be necessary.

Because interested parties and the ITC declined to comment on the Department's proposed inclusion, there is no reason for the Department to change its findings from those presented in its preliminary scope ruling. Therefore, the Department reaffirms its preliminary decision that CMD–U is included in the scope of the order on EMD from Japan. CMD–U was not specifically included or excluded from the original scope of the order because development of CMD–U was not yet complete at the time of the petition and investigation. Therefore, CMD–U is a "later-developed product." Because of the similarities between the physical characteristics, the expectations of the ultimate purchasers, the ultimate uses, the channels of trade, and the methods of advertisement and display, CMD–U is the same class or kind of merchandise as EMD, and, therefore, subject to the antidumping duty order on EMD. A detailed summary of the arguments presented by interested parties and of the Department's findings is contained in the preliminary scope ruling. 56 FR 56977 (November 7, 1991).

The final scope ruling is in accordance with section 781(d) of the Tariff Act. 19 U.S.C. 1677j(d).

Dated: December 20, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–207 Filed 1–3–92; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests by the petitioner and a respondent, the Department of Commerce has conducted an administrative review of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada. The review covers the only known manufacturer/exporter of this merchandise to the United States for the period September 1, 1989 through August 31, 1990. We preliminarily determine the dumping margin for this period to be 7.24 percent. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Allan Christian or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 36300) of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada for the period September 1, 1989 through August 31, 1990. On September 24 and September 25, 1990, the respondent, Allatt Paving Division of Ingersoll-Rand Canada, Inc., and the petitioner, Blaw Knox Construction Equipment Co., requested an administrative review of the antidumping finding. We initiated the review on October 26, 1990 (55 FR 43154). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of replacement parts for self-propelled bituminous paving equipment, excluding attachments and parts for attachments. This merchandise is currently classifiable under HTS items 4016.93.10, 7315.11.00, 7315.89.50, 7315,90.00, 8336.50.00, 8479.99.00, 8481.20.00, 8482.10.10, 8483.90.90, 8539.29.20, 8544.20.00, 8544.41.00, 8544.51.80, 8544.60.20, and 9015.30.40. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise, Allatt Paving Division of Ingersoll-Rand Canada, Inc. (Allatt), and the period September 1, 1989 through August 31, 1990.

United States Price

In calculating United States price, the Department used purchase price and exporter's sales price, as defined in section 772 of the Tariff Act. For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. For those transactions in which sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For the latter sales, the Department determined that purchase price was the appropriate determinant of United States price because the merchandise was shipped immediately after importation from the related sales agent to the unrelated buyers, without being introduced into the inventory of the related selling agent. Moreover, this arrangement was the customary commercial channel for sales of this merchandise between the parties involved. Finally, the related selling agent located in the United States acted mainly as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where sales to the first unrelated purchaser occurred after importation into the United States, we based United States price on exporter's sales price, in accordance with section 772(c) of the Tariff Act. Purchase price (PP) and exporter's sales price (ESP) were based on the packed, f.o.b. prices to unrelated purchasers in the United States. We made adjustments, where applicable, for brokerage charges, U.S. and foreign inland freight, U.S. duties and discounts. For ESP sales, we also deducted commissions to unrelated parties, credit, and indirect selling expenses.

For end user sales, we accounted for the Canadian Federal Sales Tax (FST) imposed in Canada, but rebated or not collected of reason by exportation of the merchandise to the United States. We did so by adding a constructed U.S. FST to the U.S. price pursuant to 19 U.S.C. 1677a(d)(1)(C). No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, where sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Where sufficient quantities of such and similar merchandise were not sold in the home market, we used constructed value in accordance with 19 U.S.C. 1677b(a)(2).

Home market price was based on the packed, ex-factory or delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for discounts, inland freight, credit expenses, commissions, and differences in merchandise. When making comparisons with PP sales, we deducted home market commissions and home market credit expenses from FMV and added U.S. commissions and U.S. credit expenses to FMV. In those instances in which commissions were paid in the home market but not in the U.S. market (*i.e.*, Allatt part sales), we deducted home market commissions from FMV and added to FMV the lesser of U.S. indirect selling expenses or home market commissions. See 19 CFR 353.56(b)(1). When making comparisons with ESP sales, we also deducted indirect selling expenses from foreign market value in an amount not exceeding the indirect selling expenses incurred in the U.S. market. We also made circumstance-of-sale adjustments, where appropriate, pursuant to 19 U.S.C. 1677b(a)(4), in an amount of the difference in taxes between the Canadian and U.S. markets to ensure a tax-neutral margin.

We calculated constructed value by adding material and fabrication costs, selling, general and administrative expenses (SG&A), profit, and U.S. packing, Since actual SG&A expenses were greater than the statutory minimum of ten percent of the sum of materials and fabrication costs, we used actual SG&A expenses. We used the statutory minimum of eight percent for profit.

No other adjustments were claimed or allowed.

Preliminary Results of the Reviews

As a result of our review, we preliminarily determine that the margin for Allatt is 7.24 percent for the period September 1, 1989 through August 31, 1990.

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than ten days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due.

The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Srevice.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the initial less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to Allatt, or any other previously-reviewed firm, will be the "All Others" rate established in the final results of this administrative review. This rate represents the highest rate for any firm in this administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on the best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act, as amended (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 23, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-208 Filed 1-3-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-816]

Postponement of Preliminary Countervailing Duty Determination: Certain Softwood Lumber Products From Canada

AGENCY: Import Trade Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is postponing its preliminary determination in the countervailing duty investigation of certain softwood lumber products from Canada. The Department will now issue its preliminary

determination no later than February 24, 1992.

EFFECTIVE DATE: January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau of Barbara Tillman, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION: On October 31, 1991, the Department of Commerce published the self-initiation of a countervailing duty investigation on certain softwood lumber products from Canada (56 FR 56056). This notice stated that the preliminary determination would be issued on or before 85 days following publication of our notice of initiation.

Prior to self-initiation, the Department determined that it did not have sufficient evidence to warrant an investigation of the log export restrictions programs in Canada. On December 3 and December 13, 1991, the Department received timely allegations with respect to British Columbia and Alberta, Ontario and Quebec that log export restrictions constitute subsidies within the meaning of the countervailing duty law. Since these allegations contain sufficient evidence demonstrating that the restrictions have a measurable downward effect on log prices, the Department has decided to investigate the export restriction programs of British Columbia, Alberta, Ontario, and Quebec.

The investigation of the log export restriction programs is highly complex and involves a number of novel issues. We have determined that additional time is necessary to make the preliminary determination, and that the federal and provincial governments of Canada are cooperating in this investigation.

For these reasons, we determine that this investigation is extraordinarily complicated in accordance with 19 CFR 355.15(b), and are postponing the preliminary determination until February 24, 1992.

This notice is published pursuant to 19 CFR § 355.15(e).

Dated: December 31, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-209 Filed 1-3-92; 8:45 am]

BILLING CODE 3510-05-M

Short-Supply Determination: Certain Steel Casing and Tubing

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain steel casing and tubing.

SHORT-SUPPLY REVIEW NUMBER: 61.

SUMMARY: The Secretary of Commerce hereby denies a short-supply request for 59.4 net tons of certain steel casing and tubing for the first quarter of 1992 under paragraph 8 of the U.S.-Japan steel arrangement.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Mark Brechtl or Kathy McNamara, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377-1386 or 377-1390.

SUPPLEMENTARY INFORMATION: On November 29, 1991, the Secretary of Commerce ("Secretary") received an adequate petition from Kawasaki Thermal Systems, Inc. ("KTS") requesting a short-supply allowance for 59.4 net tons of modified American Petroleum Institute 5CT seamless L80 steel casing and tubing for the first quarter of 1992, under paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of American Concerning Trade in Certain Steel Products. KTS requests the following quantities of three different sizes of this steel casing and tubing: 17.2 net tons of seamless casing that is 5½ inches in diameter and weighs 15.5 pounds per foot, 18.9 net tons of seamless casing that is 5½ inches in diameter and weighs 17 pounds per foot, and 23.3 net tons of seamless tubing that is 4 inches in diameter and weights 10.5 pounds per foot. KTS will weld the casing and tubing together to form coaxial double walled joints which will be exported to Europe for use in a heat exchanger for the disposal of solid wastes. KTS states that the only U.S. manufacturer of this material to its knowledge, USX Corporation ("USX"), was unable to meet its quantity or delivery requirements. Thus, KTS claims that this material is not available domestically. KTS states that because of the recent drop in the DRI forecast for apparent consumption of OCTG and the resultant reduction in export licenses available to Japanese exporters, it cannot obtain the subject casing and tubing from its potential Japanese supplier, Nippon Steel, without additional export licenses. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law 101-221, 103 Stat. 1886 (1989) (the "Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures. (19 CFR 357.102) ("Commerce's Short-Supply Procedures").

On November 29, 1991, the Secretary established an official record for this short-supply request (Case Number 61) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce at the above address. On December 9, 1991, the Secretary published a notice in the **Federal Register** (56 FR 64243) announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than December 16, 1991, and interested parties were invited to file replies to any comments no later than five days after that date. In order to determine whether this product could be supplied by U.S. producers for the first quarter of 1992, the Secretary sent questionnaires to six domestic casing and tubing producers that potentially have the capability to produce the requested material: UXS, CF&I Steel Corporation ("CF&I"), North Star Steel ("North Star"), Lone Star Steel ("Lone Star"), Koppel Steel Corporation ("Koppel"), and Al Tech Specialty Steel Corporation ("Al Tech"). All comments by interested parties concerning the review were due by December 16, 1991, and replies to those comments were to be filed no later than five days after that date. The Secretary received timely questionnaire responses from UXS, CF&I, North Star, Koppel, and Al Tech, rebuttal comments from KTS addressing the responses from USX, CF&I, and North Star, and additional comments from UXS and CF&I. Lone Star's submission was not timely and cannot be considered in this review.

Questionnaire Responses

Koppel and Al Tech did not offer to supply the requested product. USX offered to supply KTS with all of the requested material. USX offered to supply KTS with all of the requested material. USX stated that it could deliver the 5½ inch material in 4 to 6 weeks and the 4 inch material in 4 to 12 weeks. USX indicated that it was willing to accept minimum orders of 20 net tons per size, revised downward from its usual minimum order of 50 net tons per size.

North Star also offered to supply all of the 5½ inch material with an order-to-delivery period of 8 to 10 weeks. CF&I stated that it is able to supply all of the 5½ inch material with an order-to-delivery period of 4 to 10 weeks for the first quarter of 1992. On December 23, the Department contacted CF&I for clarification of its reported order-to-delivery time for the first quarter of 1992. CF&I stated that its correct order-to-delivery time is now 4 weeks for the requested material.

KTS's rebuttal comments contend that no domestic producer can deliver the requested product in time to satisfy its needs. KTS states that failure to receive the entire order by February 14, 1992, will cause it to be unable to meet its required delivery date to its European customer and will result in cancellation of the order. Further, KTS contends that USX's minimum order of 20 net tons per size still exceeds the quantities KTS requested for the two sizes of casing.

On December 20, USX responded to the minimum order issue by stating that it is willing to supply KTS with the quantities of 5½ inch material requested, 17.2 and 18.9 net tons, even though these amounts are less than USX's revised minimum order. On December 26, the Department contacted USX for clarification of the reported 4 to 12 week order-to-delivery period. USX stated that its correct order-to-delivery time for the 4 inch material is 4 to 6 weeks.

Analysis

The major issues in this short-supply review are whether the three domestic companies that have offered to supply the requested casing and tubing can deliver it to KTS within the normal order-to-delivery period for this product and whether USX is an acceptable supplier for quantities below 20 net tons per size.

According to the House Report to the Steel Trade Liberalization Program Implementation Act ("House Report"), the Secretary is to consider "the ability of the domestic supplier to deliver the requested product within the time frame designated by the petitioner, provided that such time frame is reasonable in light of normal order-to-delivery periods." The normal order-to-delivery period for this material, as stated in the questionnaire responses from USX, CF&I, and North Star, is 4 to 10 weeks. The first quarter of 1992 order-to-delivery times offered by USX, CF&I, and North Star for the requested product are within this range. KTS has not shown that the order-to-delivery periods offered by these three domestic producers are unreasonable or outside the normal order-to-delivery period for the industry for this material. Therefore, USX, CF&I, and North Star should be considered as able to supply KTS with the requested product within the normal order-to-delivery period.

KTS also states that USX is not an acceptable supplier of the requested material because the amounts requested for the two sizes of casing (17.2 and 18.9 net tons) are less than USX's stated minimum order of 20 net tons per size. USX, however, has stated that it is willing to accept orders for this material at tonnage levels below 20 net tons. Therefore, USX is an acceptable supplier for these quantities.

Conclusion

Because three domestic producers have offered to supply KTS in whole or in part with the requested steel casing and tubing within a normal order-to-delivery period, the Secretary has concluded that a condition of short supply does not exist for the requested product. Pursuant to section 4(b)(4)(A) of the Act, and § 357.102 of Commerce's Short-Supply Procedures, the Secretary denies KTS's short-supply request for 59.4 net tons of the certain steel casing and tubing included in this request for the first quarter of 1992, under the U.S.-Japan steel arrangement.

Dated: December 27, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-210 Filed 1-3-92; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-169. *Applicant:* Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. *Instrument:* Scanning Electron Microscope Accessories. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used in geochemical studies for analysis of hydrogen isotope ratios in waters. *Application Received by Commissioner of Customs:* November 15, 1991.

Docket Number: 91-173. *Applicant:* Laboratory of Cellular Biology, NIDCD, 9000 Rockville Pike, Building 10, room 5D50, Bethesda, MD 20892. *Instrument:* Electron Microscope, Model CEM 902. *Manufacturer:* Carl Zeiss, Germany. *Intended Use:* The instrument will be used for several analytical studies including the following:

(1) Resolution studies of replicas of auditory sensory tissues where a molecular resolution can be achieved,

(2) Visualization of frozen hydrated specimens including molecular aggregates, isolated organelles such as stereocilia and intact sensory cells,

(3) Increased contrast in unstained freeze-substituted specimens, where low contrast is a limiting factor in a conventional electron microscope,

(4) Increased contrast and definition in imaging thick specimens and

(5) Increased contrast in EM immunocytochemical specimens.

Application Received by Commissioner of Customs: November 25, 1991.

Docket Number: 91-174. *Applicant:* U.S. Geological Survey, Box 25046, Denver Federal Center, Denver, CO 80225. *Instrument:* Mass Spectrometer System, Model 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used for studies of the stable isotope variations that resulted during the formation and history of waters, rocks and minerals from a variety of geologic sites and contexts. *Application Received by Commissioner of Customs:* November 26, 1991.

Docket Number: 91-175. *Applicant:* Oregon State University, College of Oceanography, Ocean Administration Building 104, Corvallis, OR 97331-5503. *Instrument:* Deep Ocean Particle Sampler. *Manufacturer:* Challenger Oceanic Systems and Services, United Kingdom. *Intended Use:* The instrument will be used for existing and proposed research programs which are designed to define the link between upper water column properties, biological productivity, and the climate signal recorded in marine sediments. Measurements of particle flux and biological productivity are an essential component of these studies. *Application Received by Commissioner of Customs:* November 25, 1991.

Docket Number: 91-176. *Applicant:* University of California at Los Angeles, Department of Neurology, UCLA School of Medicine, 10833 LeConte Avenue, Los Angeles, CA 90024-1769. *Instrument:* Video Oculography System. *Manufacturer:* Senso Motoric Instruments GmbH, Germany. *Intended Use:* The instrument will be used to examine humans who are either suspected of having disorders of the gravity-sensing organs in their inner ears or related brainstem connections; and to evaluate normal human subjects, particularly astronauts, to determine their susceptibility to motion sickness. *Application Received by Commissioner of Customs:* November 29, 1991.

Docket Number: 91-177. *Applicant:* The Regents of the University of California, Material Management Department, Riverside, CA 92521. *Instrument:* Flow Sample Handling Unit, Model DX.17MV/SHU. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The instrument will be used to study rapid reactions catalyzed by enzymes. The results of the work are expected to contribute important new basic information about how biological systems function. In addition, the instrument will be used in a biochemistry course to train M.S. and Ph.D. students in state-of-the-art instrumentation applications to the study of biological systems. *Application Received by Commissioner of Customs:* November 29, 1991.

Docket Number: 91-178. *Applicant:* Research Foundation State University of New York, Stony Brook, NY 11794. *Instrument:* Tandem Fabry-Perot Interferometer. *Manufacturer:* J.R. Sandercock, Switzerland. *Intended Use:* The instrument will be used for the study of acoustic velocities in oxide and silicate minerals and their chemical analogues. Experiments will include investigating these properties for several different samples and for some samples in extreme pressure and temperature environments. The objective of the experiments is to better understand the current state of the Earth's interior by comparing these results with those of seismology. In addition, the instrument will be used for educational purposes in the courses GEO 556—Solid State Geophysics and GEO 607—Topics in Geophysics. *Application Received by Commissioner of Customs:* November 29, 1991.

Docket Number: 91-179. *Applicant:* U.S. Geological Survey, Water Resources Division, 345 Middlefield Road, Mail Stop 434, Menlo Park, CA 94025. *Instrument:* Electronics for Hydrogen-Water Equilibrium Device and Auto Freezing Microvolume Inlet System. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used for studies of hydrogen isotope ratios in waters. *Application Received by Commissioner of Customs:* November 29, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-211 Filed 1-3-92; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List, Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons with severe disabilities.

EFFECTIVE DATE: February 5, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On November 8, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 57323) of a proposed addition to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to the Procurement List: Janitorial/Custodial, Food and Drug Administration, 240 Hennepin Avenue, South, Minneapolis, Minnesota.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-176 Filed 1-3-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List, Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 5, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have severe disabilities.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Box, Wood, Fiberboard
8115-00-L01-0679
8115-00-L01-0680
8115-00-L01-0681
8115-00-L01-0682
8115-00-L01-0684
8115-00-L85-0005
(Requirements of the Navy Ships Parts Control Center, Mechanicsburg, PA only).

Services

Food Service Attendant, Naval Station, Staten Island Galley, New York, New York.

Repair and Cleaning of Respirators, Robins Air Force Base, Georgia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-177 Filed 1-3-92; 8:45 am]

BILLING CODE 6820-33-M

CONSUMER PRODUCT SAFETY COMMISSION

Technical Advisory Group for Cigarette Fire Safety; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Technical Advisory Group for Cigarette Fire Safety will meet on January 24, 1992, in Gaithersburg, Maryland. The purpose of the meeting is to discuss recent research on cigarette ignition propensity and plans for a cigarette fire incident study.

DATES: The meeting will be from 9 a.m. to 3 p.m. on January 24, 1992 .

ADDRESSES: The meeting will be in room B19, Palmers Building 224, at the National Institute for Standards and Technology, Gaithersburg, Maryland. For a recorded message containing the latest information about the time and location of the meeting call (301) 504-0709.

FOR FURTHER INFORMATION CONTACT: Beatrice M. Harwood, Directorate for Epidemiology, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0470.

SUPPLEMENTARY INFORMATION: The Fire Safe Cigarette Act of 1990 (FSCA) (Pub. L. 101-352, 104 Stat. 405) directs the Commission, with assistance from the National Institute for Standards and Technology (NIST) and the Department of Health and Human Services to conduct research concerning the feasibility of a performance standard to address the propensity of cigarettes to act as an ignition source. The FSCA also establishes an advisory committee, the Technical Advisory Group for Cigarette Fire Safety, to advise and work with the Commission and NIST in the implementation of that act.

The Technical Advisory Group for Cigarette Fire Safety will meet on January 24, 1992, to discuss recent research on cigarette ignition propensity and plans for a cigarette fire incident study.

The meeting will be open to observation by members of the public, but only members of the Technical Advisory Group for Cigarette Fire Safety may participate in the discussion. Persons who desire to submit written statements or questions for consideration by the Technical Advisory Group, before or after the meeting, should address them to the Technical Advisory Group for Cigarette Fire Safety, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Dated: December 30, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92-212 Filed 1-3-92; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Nuclear Failsafe and Risk Reduction Advisory Committee; Meeting

AGENCY: Nuclear Failsafe and Risk Reduction Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Nuclear Failsafe and Risk Reduction Review Advisory Committee. The purpose of the meeting is to discuss and approve an Interim Report to the Secretary of Defense regarding status of the comprehensive and independent review of U.S. positive measures for the prevention of unauthorized or inadvertent use of nuclear weapons to date and preliminary finding regarding the need for additional failsafe procedures and mechanisms. This meeting will be closed to the public.

DATES: 22 January 1992, 1500-1600.

ADDRESSES: Pentagon, Crisis Coordination Center, room 3C912.

FOR FURTHER INFORMATION CONTACT: Colonel Bill Jones, U.S. Army, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline #3, 5201 Leesburg Pike, suite 500, Falls Church Virginia 22041, (703) 756-8680.

Dated: December 30, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 92-111 Filed 1-3-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board Meeting

December 30, 1991.

The USAF Scientific Advisory Board Arnold Engineering Development Center (AEDC) Advisory Group will meet on January 22-23, 1992 from 8 a.m. to 4 p.m. Central Time at Arnold Air Force Base, Tennessee.

The purposes of this meeting will be to acquaint the new AEDC Advisory Group members with the mission and test facilities of AEDC and to receive feedback from the AEDC Advisory Group on the planning process that is used to identify/select/fund/build AEDC's technical facilities. This meeting will be closed to the public, in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-152 Filed 1-3-92; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 3, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Request for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that the public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: December 30, 1991.

Wallace R. McPherson, Jr.,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: New.

Title 1993 National Study of Postsecondary Faculty—List Collection Procedures.

Frequency: Quadrennial.

Affected Public: Individuals or households; State or local governments; businesses or other for-profit; non-profit institutions.

Reporting Burden: Responses—111; Burden Hours—168.

Recordkeeping Burden: Recordkeepers—0; Burden Hours—0.

Abstract: This information collected by this form will be used to develop a faculty list. The Department will use this list to conduct the field test and the full-scale study for the 1993 National Study of Postsecondary Faculty (NSOPF).

[FR Doc. 92-112 Filed 1-3-92; 8:45 am]

BILLING CODE 4000-01-M

Office of Educational Research and Improvement

[CFDA No.: 84.999E]

The National Assessment of Educational Progress (NAEP) Program

AGENCY: Department of Education.

ACTION: Extension of deadline date for transmittal of applications.

SUMMARY: On November 25, 1991, the Secretary published in the **Federal Register** (56 FR 59250) a notice inviting applications for an award to conduct the design, item development, field testing, and printing of final assessment booklets for the 1994 National Assessment of Educational Progress. Detailed information was included in that notice.

The purpose of this notice is to extend the deadline date for transmittal of applications.

DATES: The Secretary extends the deadline date for transmittal of applications from January 10, 1992 to January 17, 1992.

FOR APPLICATIONS OR INFORMATION CONTACT: Steven Gorman, U.S. Department of Education, 555 New Jersey Avenue, NW., room 308, Washington, DC. 20208-5653. Telephone (202) 219-1937.

Program Authority: 20 U.S.C. 1221e.

Dated: December 31, 1991.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92-190 Filed 1-3-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) (Pub. L. 92-463), and in accordance with 41 CFR Part 101-6.10, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Secretary of Energy Advisory Board has been renewed for an additional two years.

The Board will continue to provide advice to the Secretary of Energy on the research, development, energy, and national defense responsibilities, activities, and operations of the Department of Energy and provide expert guidance in these areas to the Department.

Board members have been selected for their backgrounds and experience in the basic sciences, in energy production and distribution technologies, in related fields of conservation, economics, the environment, management, and public policy, and in the national defense field, such as nuclear weapons research, testing, and verification and nuclear materials production and safety. Particular attention will also be paid to obtaining a balance of interests, points of view, and geography.

The establishment of the Secretary of Energy Advisory Board has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Board operates in accordance with the provisions of FACA, the Department of Energy Organization Act, the GSA Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee can be obtained from Frederica Cravens (202/586-3282).

Issued in Washington, DC on January 2, 1992.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 92-194 Filed 1-3-92; 8:45 am]

BILLING CODE 6450-01-M

University of Alabama; Grant

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of award intent.

SUMMARY: The U.S. Department of Energy's Idaho Field Office announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7, it intends to award a new start Grant Number DE-FG07-92ID13163 to the University of Alabama. The objective of the work to be performed under this Grant is to establish the metal casting competitiveness research.

FOR FURTHER INFORMATION CONTACT: Dallas L. Hoffer, U.S. Department of Energy, Idaho Field Office, 785 DOE Place MS 1221, Idaho Falls, Idaho 83401-1562, 208/526-0014.

SUPPLEMENTARY INFORMATION: The statutory authority for the research is Public Law 101-425, Department of Energy Metal Casting Competitiveness Research Act of 1990. The unsolicited proposal meets the criteria for "non-competitive financial assistance," as set forth in 10 CFR 600.7(b)(2). The objective of the project is to perform research in four separate thrust areas: (1) Clean casting; (2) environmental; (3) mold/

metal interactions; and (4) computer modeling and control. The anticipated total project period to be awarded is twenty-four (24) months. The estimated total award value is $2,200,000.00. The estimated University of Alabama cost share will equal or exceed $1,281,000.00 or approximately 58% of the total.

Contact: U.S. Department of Energy, Idaho Field Office, 785 DOE Place, Idaho Falls, Idaho 83402, Dallas L. Hoffer, Contract Specialist (208) 526-0014.

Dated: December 20, 1991.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 92-196 Filed 1-3-92; 8:45 am]

BILLING CODE 6450-01-M

Dairy Research Foundation; Financial Assistance

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of award intent.

SUMMARY: The U.S. Department of Energy's Idaho Field Office announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7, it intends to award a new start Financial Assistance Number DE-FG07-92ID13165 to the Dairy Research Foundation. The objective of the work to be performed under this project is to develop freeze concentration technology for use in the dairy industry.

FOR FURTHER INFORMATION CONTACT: Dallas L. Hoffer, U.S. Department of Energy, Idaho Field Office, 785 DOE Place MS 1221, Idaho Falls, Idaho 83401-1562, 208/526-0014.

SUPPLEMENTARY INFORMATION: The statutory authority for the research is Public Law 93-577, Federal Non-Nuclear Research and Development Act of 1974; Public Law 96-294, Energy Security Act; Public Law 93-438, Energy Reorganization Act of 1974; and Public Law 94-385, The Energy Conservation and Production Act. The unsolicited proposal meets the criteria for "non-competitive financial assistance," as set forth in 10 CFR 600.7(b)(2). The objective of the project is to: (1) Conduct tests of the freeze concentration Prototype Development Unit (PDU) concentrating a variety of diary feeds; and (2) to conduct crystalization studies. The anticipated total project period to be awarded is twelve (12) months. The estimated total award value is $898,192.00. The estimated Dairy Research Foundation cost share will equal or exceed $698,192.00 or approximately 78% of the total.

Contact: U.S. Department of Energy, Idaho Field Office, 785 DOE Place, Idaho Falls, Idaho 83402, Dallas L. Hoffer, Contract Specialist (208) 526-0014.

Dated: December 20, 1991.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 92-198 Filed 1-3-92; 8:45 am]

BILLING CODE 6450-01-M

University of Northern Iowa; Grant

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of award intent.

SUMMARY: The U.S. Department of Energy's Idaho Field Office announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7, it intends to award a new start Grant Number DE-FG07-92ID13164 to the University of Northern Iowa. The objective of the work to be performed under this Grant is to establish the metal casting competitiveness research.

FOR FURTHER INFORMATION CONTACT: Dallas L. Hoffer, U.S. Department of Energy, Idaho Field Office, 785 DOE Place MS 1221, Idaho Falls, Idaho 83401-1562, 208/526-0014.

SUPPLEMENTARY INFORMATION: The statutory authority for the research is Public Law 101-425, Department of Energy Metal Casting Competitiveness Research Act of 1990. The unsolicited proposal meets the criteria for "non-competitive financial assistance," as set forth in 10 CFR 600.7(b)(2). The objective of the project is to perform research in four separate thrust areas: (1) Sand reclamation; (2) a die cast research consortium; (3) robotic ultrasonic inspection/testing; and (4) technical assessment of midwest research needs. The anticipated total project period to be awarded is thirty-six (36) months. The estimated total award value is $2,200,000.00. The estimated University of Northern Iowa cost share will equal or exceed $1,281,000.00 or approximately 58% of the total.

Contact: U.S. Department of Energy, Idaho Field Office, 785 DOE Place, Idaho Falls, Idaho 83402, Dallas L. Hoffer, Contract Specialist (208) 526-0014.

Dated: December 20, 1991.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 92-197 Filed 1-3-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF92-42-000]

Oyster Creek Limited; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 27, 1991.

On December 11, 1991, Oyster Creek Limited, in c/o Destec Energy, Inc., 2500 City West Blvd., suite 150, Houston, Texas 77042, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Dow Chemical Company industrial complex near Oyster Creek, Texas. The facility will consist of three combustion turbine generators, one extraction/condensing steam turbine generator, three heat recovery boilers (HRBs), approximately 3.3 miles of 138KV transmission line and associated equipment. Thermal energy, in the form of extraction steam and steam from the HRBs, will be used by Dow Chemical for the production of chemical products. The net electric power production capacity of the facility will be 381 MW. The primary energy source for the facility is natural gas. Installation of the facility is expected to begin in October 1992.

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 92-132 Filed 1-3-92; 8:45 am]

BILLING CODE 6717-01-M

ANR Pipeline Co.; Relocating Informal Settlement Conference

[Docket Nos. RP89-161-000, RP89-172-000, CP91-678-000, and CP90-2275-000]

December 27, 1991

Take notice that the informal settlement conference scheduled in this proceeding to commence on Tuesday, January 7, 1992, at 9 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, will be held instead at 825 North Capitol Street, NE., Washington, DC. The purpose of the conference is to explore the possible settlement of the above-referenced docket. The conference will continue through Wednesday, January 8, 1992.

Any party, as defined in 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Michael D. Cotleur at (202) 208-1076 or James A. Pederson at (202) 208-2158.

Lois D. Cashell,

Secretary.

[FR Doc. 92-128 Filed 1-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-264-000]

Kern River Gas Transmission Co.; Request Under Blanket Authorization

December 27, 1991.

Take notice that on December 23, 1991, Kern River Gas Transmission Company (Kern River), Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP92-264-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations for authorization to construct and operate certain tap and meter facilities under Kern River's blanket certificate issued in Docket No. CP89-2048-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Kern River requests authorization to construct and operate a sales tap and meter facilities required to deliver gas to Amoco Energy Trading Corporation (Amoco) at seven delivery points along Kern River's mainline facilities in Juab, Millard, Beaver, Iron and Washington Counties, Utah. The details as proposed by Kern River are shown in the table below.

Site name and milepost	Delivery volume (Mcf/day)	County
Dog Valley, MP 208	2,175	Juab.
Scipio, MP219.7	435	Millard.
Holden, MP232.2	388	Millard.
Fillmore, MP243.5	2,070	Millard.
Milford, MP300.9	3,211	Beaver.
New Castle, MP357.1.	628	Iron.
Central, MP375.5	529	Washington.

Kern River states that each point would consist of a 3-inch diameter pipeline tap and two related buildings. It is stated that in the case of Dog Valley, Fillmore and Milford, the first building would house two 3-inch meter runs, headers, control valves and related yard piping. Kern River states that in the case of Scipio, Holden, New Castle and Central, the first building would house a rotary meter and related yard piping. It is indicated that the second building at each point would house the System Control and Data Acquisition equipment to control the operation of the meter station and to communicate with Kern River's Gas Control Facility in Salt Lake City, Utah.

Kern River explains that it would provide transportation service to Amoco under Kern River's blanket transportation certificate and pursuant to the terms of Kern River's Rate Schedule KRF-1 (firm transportation). Kern River indicates that the proposed service to Amoco at these points would not impact Kern River's ability to render service to other firm shippers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-130 Filed 1-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-3-16-003 and TQ92-3-16-000]

National Fuel Gas Supply Corp.; Request for Special Relief or, in the Alternative, Reconsideration

December 27, 1991.

Take notice that National Fuel Gas Supply Corporation (National Fuel) on December 20, 1991, filed a request for special relief or, in the alternative, reconsideration of the Commission's letter order dated November 21, 1991.

National Fuel states that the Commission by letter order issued November 21, 1991, rejected its filing made on June 19, 1991, in Docket Nos. TQ91-3-16-001 and TF91-11-16-001 to comply with a letter order issued June 28, 1991 in Docket No. TQ91-3-16-000, because it contained rate increases to track increases in its pipeline supplier demand costs. National Fuel admits that it should have originally filed its compliance filing dated June 19, 1991, as an out-of-cycle PGA filing to track the increase of its pipeline suppliers' demand costs effective July 1, 1991. National Fuel requests the Commission reconsider and approve the compliance filing as out-of-cycle PGA filing with a proposed effective date of August 1, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-134 Filed 1-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-239-000]

Northern Natural Gas Co.; Application

December 27, 1991.

Take notice that on December 13, 1991, Northern Natural Gas Company (Northern), 1400 Smith Street, Houston, Texas 77251, filed in Docket No. CP92-239-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the increase of 825

Mcf of natural gas per day of sales entitlements for Northern States Power Company and Northern States Power Company of Wisconsin (NSP), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that in order for NSP to serve increased requirements in and around the communities of Withrow and Faribault, Minnesota, Northern requests authorization to increase its current sales entitlements to NSP by 825 Mcf per day under Northern's Season Service Demand Schedule, Rate Schedule SS-1. It is also stated that pursuant to an executed service agreement dated October 30, 1991, the increased sales service will become effective on November 1, 1991, or such other date as approved by the Commission, whichever is later. It is further stated that the additional sales service to NSP will be accomplished without constructing new facilities or rearranging presently authorized facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 17, 1992, 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 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 a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-133 Filed 1-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-1978-000, CP91-1589-000]

Panhandle Eastern Pipe Line Co. and Phillips 66 Natural Gas Co.; Technical Conference

December 27, 1991.

Take notice that on January 14, 1992, a technical conference will be convened at the offices of the Federal Energy Regulatory Commission to discuss an issue regarding Panhandle Eastern Pipe Line Company's application in Docket No. CP90-1978-000 to abandon by sale its Powder River System. Phillips 66 Natural Gas Company filed a petition, in Docket No. CP91-1589-000, requesting that the Commission disclaim jurisdiction over the facilities upon Phillips' acquisition of these facilities.

The specific issue to be discussed in this conference, as raised by Western Gas Processors, Ltd., is the continuing gas imbalance on the Powder River System. The Commission invites all parties who have filed motions to intervene to attend the conference. The conference will be held at 10 a.m. at 810 First Street, NE., Washington, DC. The room will be posted on the 1st floor of that building on the day of the conference.

Lois D. Cashell,

Secretary.

[FR Doc. 92-129 Filed 1-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC92-6-000]

UGI Corp.; Filing

December 27, 1991

Take notice that on December 23, 1991, UGI Corporation ("UGI") tendered for filing an application for an order authorizing a corporate reorganization.

UGI is a corporation organized and existing under the laws of Commonwealth of Pennsylvania, and through its Luzerne Electric Division is engaged in producing and selling electric energy to approximately 58,600 customers in two counties in northeastern Pennsylvania. UGI proposes to reorganize into a holding company structure with New UGI Corporation ("New UGI") becoming the parent of UGI. UGI will continue to operate its Luzerne Electric Division facilities without change. UGI seeks an order pursuant to section 203 of the Federal Power Act granting any authorization required for the implementation of this reorganization.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-131 Filed 1-3-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Superconducting Super Collider Environmental, Safety, and Health Advisory Committee; Determination To Establish

Pursuant to section 9(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92-463), and 41 CFR 101.6.1005 of the Final Rule on Advisory Committee Management, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Superconducting Super Collider Environmental, Safety, and Health Advisory Committee (SSC ES&HAC) has been established.

The purpose of the Committee is to provide advice and guidance to the Department on the non-technical aspects of the SSC project including: Periodic review and assessment of ES&H aspects of management of the project and recommendations thereon; advice on proposed strategies for addressing ES&H issues relating to industrial involvement, international partners, interface with other government agencies, and public outreach; and advice on ES&H issues relating to the project management and design.

The Committee members will be chosen to ensure an appropriately balanced membership, taking into account (1) the disciplines to be

represented, such as high energy physics, geology, environment, and public safety; (2) institutions involved in the SSC program such as universities, national laboratories, and industry; and (3) appropriate geographic distribution. The establishment of the SSC ES&HAC has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the FACA, the Department of Energy Organization Act (Pub. L. 95-91), the GSA Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee may be obtained from Rachel Murphy at (202) 586-3279.

Issued at Washington, DC on: December 31, 1991.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 92-193 Filed 1-3-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Joint Meeting National Coal Council and Coal Policy Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Tuesday, January 28, 1992, 9 a.m.

Place: Stouffers Concourse Hotel, Washington National Airport, 2399 Jefferson Davis Highway, Arlington, Virginia.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-3867.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting: To consider and act upon the two studies the Council is currently completing, to consider requests for new studies, and to provide a briefing and orientation for new members.

Tentative Agenda

—Call to order by C. Carter Grinstead, Jr., Chairman of the National Coal Council.
—Remarks by Chairman Grinstead.
—Remarks by William Wahl, Chairman of the Coal Policy Committee.
—Discussion of completed studies.
—Discussion of new studies.
—Briefing and orientation of new members.
—Discussion of any other business properly brought before the Council.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on December 27, 1991.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92-199 Filed 1-3-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-73-NG]

Oryx Gas Marketing Limited Partnership; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Oryx Gas Marketing Limited Partnership blanket authorization to import up to 200 Bcf of natural gas, including liquefied natural gas (LNG) from Canada, Mexico and other countries and to export up to 200 Bcf of natural gas, including LNG, to Canada, Mexico and other countries, over a two-year term beginning on the date of first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., December 27, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-202 Filed 1-3-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-88-NG]

Michigan Consolidated Gas Co.; Application To Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 17, 1991, of an application filed by Michigan Consolidated Gas Company (MichCon) requesting authorization to import up to 50,000 Mcf of natural gas per day from Canada over a three-year term beginning on the date of first delivery after January 22, 1992, the date its existing import authority under DOE/ERA Opinion and Order No. 96 (as amended) expires. The proposed imports would take place at the United States-Canadian border near Emerson, Manitoba, where existing pipeline facilities are located. No new pipeline construction would be involved.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time, February 3, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:
MichCon, a Michigan corporation with its principal place of business in Detroit, Michigan, is engaged in the storage, transmission, and local distribution of natural gas to approximately one million customers in the State of Michigan. On December 20, 1985, the DOE , in Opinion and Order No. 96, authorized MichCon to import up to 13,000 Mcf of natural gas per day from Canada for a three-year term beginning on the date of first delivery (1 ERA Para. 70,614). The first import under that authorization took place on January 22, 1986. The authorization was increased to 50,000 Mcf per day in DOE/ERA Opinion and Order No. 135 issued on July 14, 1986 (1 ERA Para. 70,658) and was extended for an additional three years (through January 22, 1992) in DOE/ERA Opinion and Order No. 296 issued on January 19, 1989 (1 ERA Para. 70,837).

In its October 17, 1991, application, MichCon requests that this authorization be further extended for three years. The import facilitates an energy exchange between MichCon and Esso Chemical Canada, a division of Imperial Oil Limited (Imperial). Under that exchange, Shell Western E&P (Shell) extracts ethane from natural gas sold to MichCon. The ethane is transported by Shell and Dome Petroleum Corporation to Canada where it is used as a feedstock in Imperials' Sarnia, Ontario, petrochemical plant. In exchange for the ethane, Imperial purchases a Btu equivalent amount of natural gas from TransCanada Pipelines Limited (TCPL). It is this gas that MichCon herein seeks authority to import, via the Great Lakes Gas Transmission Company, to its facilities in the United States. MichCon notes in its application that the operational problems on its natural gas distribution system that require it to conduct this natural gas/ethane exchange have not changed since MichCon filed its previous application. In that application, MichCon explained that a high level of ethane in its gas would prevent it from maintaining the stable Btu quality demanded by its industrial customers. Further, at times, a higher concentration of mercaptan sulphur remains with the ethane in the gas and causes an increase in the number of leak complaints, especially during the fringe heating season months.

The gas to be imported under its current application will become part of MichCon's general system supply. As such, it will be used by any and all of MichCon's nearly one million customers including those communities in the northern peninsula of Michigan which can only be served off the Great Lakes' system. MichCon intends to use existing facilities of U.S. pipelines to transport its imported gas supplies and does not contemplate the construction of any new facilities. Accordingly, MichCon asserts that imports for which authorization is requested will have no significant impact on the environment. If its application is approved, MichCon stated that it would comply with DOE's quarterly reporting provisions contained in previous authorizations.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In its application MichCon asserts the import is not inconsistent with the public interest because the energy exchange enables MichCon to avoid the operational problems associated with the high level of ethane in natural gas. Parties opposing MichCon's request for import authorization bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of MichCon's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 24, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-195 Filed 1-3-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-72-NG]

Sun Operating Limited Partnership; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and

export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Sun Operating Limited Partnership blanket authorization to import up to 200 Bcf of natural gas, including liquefied natural gas (LNG), from Canada, Mexico and other countries, and to export up to 200 Bcf of natural gas, including LNG, to Canada, Mexico and other countries over a two-year term beginning on the date of first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 27, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-201 Filed 1-3-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-4089-5]

Clean Air Act; 1990 Amendments

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) has completed the final report on the "Nonroad Engine and Vehicle Emission Study." This study was mandated in the 1990 Amendments to the Clean Air Act and is to be used in determining potential regulation of nonroad engines and vehicles.

DATES: The final report has been released and is currently available to the public.

ADDRESSES: Materials relevant to this study are contained in Docket No. A-91-24. The docket is located at the Air Docket Room, room M-1500 (LE-131), Waterside Mall, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: John German, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 668-4214, FTS 374-8214.

SUPPLEMENTARY INFORMATION: Title II of the Clean Air Act (CAA) as amended by the 1990 Clean Air Act Amendments, requires EPA to study emissions from nonroad engines and vehicles in areas of the country which fail to attain the National Ambient Air Quality Standards (NAAQS) for either ozone or carbon monoxide. In doing this study, EPA examined ten pollutants emitted by nonroad engines and vehicles using emission data collected both nationally and in twenty-four nonattainment areas. The nonroad engine and vehicle categories included in the study are lawn and garden, airport service equipment, recreational equipment, recreational marine equipment, light commercial equipment, construction equipment, agricultural equipment, commercial marine vessels, logging equipment, and industrial equipment.

The final report of this study is completed and available to the public. It may be inspected in the public docket, No. A-91-24, at the address provided in ADDRESSES. Copies are available for viewing, purchase and/or duplication at the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161, (703) 487-4650. A reasonable fee may be charged for services. In addition, the report may be viewed at Regional EPA Air Offices. Duplication services at these facilities may be limited.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-184 Filed 1-3-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4087-2]

Final Ruling on Petition Pursuant to Section 324(a)(1) of the Clean Air Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final ruling on petition.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is granting a petition submitted by the Governor of the Virgin Islands pursuant to section 324(a)(1) of the Clean Air Act Amendments of 1990. In response to the petition, EPA hereby exempts the Virgin Islands Water and Power Authority (VIWAPA) from having to obtain a Prevention of Significant Deterioration (PSD) of Air Quality permit prior to commencement of construction of its Unit #18 in accordance with the specified conditions detailed in this final ruling.

EFFECTIVE DATE: January 5, 1992.

ADDRESSES: Kenneth Eng, Chief, U.S. EPA—Region II, Air Compliance Branch, 26 Federal Plaza, room 500, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Kenneth Eng, at (212) 264-9726.

SUPPLEMENTARY INFORMATION: Alexander A. Farrelly, Governor of the Virgin Islands, submitted a petition to the Administrator of EPA pursuant to section 324(a)(1) of the Clean Air Act, 42 U.S.C. 7625-1(a)(1), as amended by the Clean Air Act Amendments of 1990, Public Law 101-549 806 (the "Act") on April 22, 1991. The petition requested that the Virgin Islands Water and Power Authority (VIWAPA) be authorized to commence construction of an electric generation unit (Unit #18) prior to receipt of an effective Prevention of Significant Deterioration (PSD) of Air Quality permit. The request did not include allowing the operation of any part of Unit #18 unless and until the PSD permit is issued in final form and is made effective.

The primary provisions of the PSD regulations require that major new stationary sources and major modifications at stationary sources be carefully reviewed prior to commencement of construction to ensure compliance with the National Ambient Air Quality Standard (NAAQS), the applicable PSD air quality increments, and the requirement to apply Best Available Control Technology (BACT) to minimize the project's emissions of air pollutants. This is a requirement of section 110(a)(2)(C).

As amended, Section 324(a)(1) states that:

> * * * the Administrator is authorized to exempt any person or source or class of persons or sources in such territory from any requirement under this Act other than Section 112 or any requirement under Section 110 or Part D necessary to attain or maintain a national primary ambient air quality standard. Such exemptions may be granted if the Administrator finds that compliance with requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory or such other local factors as the Administrator deems significant * * *

The 1990 amendments to the Act permit such exemptions to apply to the Virgin Islands.

On the basis of the language cited above, the first prerequisite to granting an exemption under section 324(a)(1), is that the request not involve any requirement necessary to attain or

maintain a national primary air quality standard. Although the PSD program is a requirement under section 110, the PSD permitting requirements of the program are generally applicable to areas which attain the NAAQS. The air quality analyses which have been performed for the Unit #18 PSD review indicate that this unit will not cause a violation of the NAAQS in the Virgin Islands. Therefore, the VIWAPA Unit #18 project is within the scope of section 324(a)(1), and can qualify for an exemption from the permitting requirements of the PSD regulations based on this prerequisite.

The other prerequisite to granting such a petition is that the requirement is not feasible or is unreasonable due to unique geographical or meteorological factors or such local factors as the Administrator may deem significant. No arguments have been presented which demonstrate that the requirement for a permit is not feasible. Information contained in the petition indicates that there is a critical need for additional power and potable water for the residents of St. Thomas and the neighboring islands. In analyzing the situation currently existing at VIWAPA, the Administrator concludes that although the power shortage may not be attributable to the geography and meteorology of the islands, the current capability of the system, merits special consideration as a significant "local factor"

VIWAPA's lack of additional power generating and water desalination capacity to meet current power demands and to ensure adequate water supply will have significant impact on the residents of St. Thomas and St. John. There is evidence that the existing capacity is being extended beyond its limits and the loss of any existing capacity would cause very serious limits on power and potable water. A decision to allow construction, but not operation, of Unit #18 without a PSD permit does not solve the problem of inadequate power. On February 5, 1991, VIWAPA submitted a PSD permit application for Unit #18. EPA issued a draft PSD permit for unit #18 on August 20, 1991. There is no indication at this time that a proper permit will not be issued in the near future. During the 30-day public comment period for the proposed ruling (September 11, 1991—October 11, 1991) no comments were received from the public, with the exception of the Department of the Interior. The Department of the Interior requested a 3-week extension so that comments could be provided by November 4, 1991. However, no comments were received from the Department of the Interior.

Based upon these considerations, the Administrator therefore approves the Governor's request for a limited exemption from certain of the PSD regulations with respect to VIWAPA, subject to the following conditions:

1. The exemption shall be for installation of the proposed gas turbine, (Unit #18) prior to obtaining a PSD permit. VIWAPA would be authorized to perform only the following activities as they relate to Unit #18 prior to permit issuance: Clear/level the ground, excavate the ground for foundation and piling, construct turbine pad, install unit, install wiring/connection with control room, power grid and fuel supply.

2. VIWAPA will proceed as rapidly as possible to obtain a PSD permit for Unit #18. VIWAPA shall also submit a bimonthly (by the tenth day of the following month) progress reports to EPA Region II. These reports shall provide the status on the consideration of Unit #18. This requirement to submit reports to EPA shall continue until completion of construction/installation of the unit.

3. VIWAPA shall modify/retrofit the gas turbine to accommodate whatever is ultimately determined to be the BACT for oxides of nitrogen and carbon monoxide, and all other pollutants for which emission limitations are established in the permit.

4. VIWAPA shall not operate the unit until a final PSD permit is issued by EPA Region II. VIWAPA shall not operate the unit for shakedown, performance testing and other "start up" activities considered "operation" of the unit.

VIWAPA shall hereby be exempt from the prohibition on beginning actual construction of a PSD affected facility without an effective PSD permit for the facility described above, provided that the conditions listed above are met. VIWAPA shall submit a complete PSD permit application as soon as possible and is not exempt from the requirement to operate the facilities in accord with the application for and the terms of such PSD permit that may be finally issued and made effective for the facility. This exemption shall terminate:

1. Six (6) months from the effective date of this **Federal Register** notice; or

2. On the effective date of a PSD permit issued for this facility; or

3. Upon any failure by VIWAPA to adhere to the conditions set out herein.

This limited exemption does not guarantee that EPA will issue a PSD permit reflecting the terms set forth in VIWAPA's application. EPA reserves the right to issue a final PSD permit that contains terms other than those requested in VIWAPA's application, or deny the application altogether. Thus, any expenditures by VIWAPA as a result of beginning actual construction prior to the issuance of a final and effective PSD permit are made at VIWAPA's risk. In addition, the terms of any PSD permit issued by EPA will be established without regard to any construction related expenditures that may be made by VIWAPA prior to the issuance of such permit.

Dated: December 19, 1991.

William K. Reilly,

Administrator.

[FR Doc. 92-185 Filed 1-3-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-44579; FRL-4042-1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on vinylidene fluoride (VDF) (CAS No. 75-38-7), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for VDF were submitted by the Chemical Manufacturers Association on behalf of the Vinylidene Fluoride Producers Task Group and pursuant to a test rule at 40 CFR 799.1700. They were received by EPA on December 10, 1991. The submission describes an inhalation oncogenicity study of vinylidene fluoride in the mouse. Health effects testing is required by this test rule. Fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

EPA has initiated its review and evaluation process for these data

submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS-44579). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: December 26, 1991.

Lois Dicker,

Acting Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-181 Filed 1-3-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Territory of American Samoa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Territory of American Samoa (FEMA-927-DR), dated December 13, 1991, and related determinations.

DATES: December 13, 1991.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3606.

NOTICE: Notice is hereby given that, in a letter dated December 13, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub.L. 100-707), as follows:

I have determined that the damage in certain areas of the Territory of American Samoa, resulting from Hurricane Val on December 6, 1991 through and including December 10, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Territory of American Samoa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses; however, no Public Assistance funds will be committed until adequate certification of non-Federal cost sharing is received.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard A. Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine that following areas of the Territory of American Samoa to have been affected adversely by this declared major disaster:

The Territory of American Samoa for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92-163 Filed 1-3-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-928-DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA-928-DR), dated December 26, 1991, and related determinations.

DATES: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3606.

NOTICE: Notice is hereby given that, in a letter dated December 26, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from a severe ice storm on October 31-November 2, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Warren M. Pugh, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

The counties of Adair, Adams, Audubon, Boone, Buena Vista, Calhoun, Carroll, Cass, Cerro Gordo, Cherokee, Clay, Dallas, Dickinson, Emmet, Franklin, Fremont, Greene, Guthrie, Hamilton, Hancock, Hardin, Humboldt, Kossuth, Madison, Mills, Mitchell, Montgomery, Osceola, Page, Palo Alto, Pocahontas, Ringgold, Sac, Shelby, Taylor, Webster, Winnebago, Worth, and Wright for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92-170 Filed 1-3-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-926-DR]

Federated States of Micronesia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Federated States of Micronesia (FEMA-926-DR), dated December 10, 1991, and related determinations.

DATES: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Tim Maywalt of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster. This action terminates my appointment of Richard A. Buck as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92-162 Filed 1-3-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-929-DR]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA-929-DR), dated December 26, 1991, and related determinations.

DATES: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3606.

NOTICE: Notice is hereby given that, in a letter dated December 26, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from a severe ice storm on October 31, 1991, through November 29, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Gary K. Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Minnesota to have been affected adversely by this declared major disaster:

The counties of Blue Earth, Dodge, Freeborn, Goodhue, Mower, Olmstead, Rice, Steele, and Waseca for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92-169 Filed 1-3-92; 8:45 am]

BILLING CODE 6718-02-M

Texas; Major Disaster and Related Determinations

[FEMA-930-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-930-DR), dated December 26, 1991, and related determinations.

DATES: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3606.

NOTICE: Notice is hereby given that, in a letter dated December 26, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe thunderstorms and flooding on December 20, 1991, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be provided at a later time, if needed. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Brad Harris of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

The counties of Bastrop, Bosque, Brown, Dallas, and Travis for Individual Assistance.

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

FR Doc. 92-168 Filed 1-3-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

International Longshoremen's Association, et al.; Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200083-006.

Title: International Longshoremen's Association/Carrier Container Council Implementation Agreement.

Parties: International Longshoremen's Association, AFL-CIO Carriers Container Council.

Synopsis: The Agreement, filed December 23, 1991, provides for payment of container royalties in accordance with the terms of the master contract between the ILA and CCC.

Agreement No.: 224-200601.

Title: Georgia Ports Authority/Saga Forest Carriers Agreement.

Parties: Georgia Ports Authority, Saga Forest Carriers.

Synopsis: The Agreement, filed December 23, 1991, provides for an incentive refund of dockage for Saga vessels calling at the ports of Savannah or Brunswick. The term is one year and renewable.

Agreement No.: 217-011363.

Title: Space Charter Agreement Between Frontier Liner Services Inc. and Venezuela Transport Line, Inc.

Parties: Frontier Liner Services, Inc., Venezuela Transport Line, Inc.

Synopsis: The proposed Agreement would permit the parties to charter space on each other's vessels in the trade between ports in Venezuela and Colombia and ports in the U.S. Atlantic.

Dated: December 30, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-137 Filed 1-3-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Committee on Vital and Health Statistics (NCVHS) Work Group on Confidentiality; Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following meeting.

Name: NCVHS Work Group on Confidentiality.

Time and Date: 9 a.m.-5 p.m., January 15, 1992, 9 a.m.-12 noon, January 16, 1992.

Place: Room 303A-305A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is to receive information and comments from representatives of public and private agencies invited to discuss issues related to data access and privacy, data security, data release, and the use of unique identifiers.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050 or FTS 436-7050.

Dated: December 30, 1991.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 92-230 Filed 1-3-92; 8:45 am]

BILLING CODE 4160-18-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 56 FR 65271, December 16, 1991) is amended to reflect the revision of the functional statements for the Personnel Management Office and the Office of the Director, Personnel Management Office, Office of Program Support.

Section HC-A, Organization and Functions, is hereby amended as follows:

Delete in their entirety the headings and functional statements for the *Personnel Management Office (HCA57)* and the *Office of the Director (HCA571)* and substitute the following:

Personnel Management Office (HCA57). (1) Provides service, support, advice, and assistance to CDC organizations, management, and employees on personnel related activities; (2) conducts and coordinates personnel management for CDC's civil service and Commissioned Corps personnel; (3) conducts CDC's visiting programs; (4) develops and issues policies and procedures; conducts staffing, position classification, pay administration, performance management systems, employee training and development, and employee and labor relations programs; (5) conducts and coordinates a position management program; (6) maintains personnel records and reports, and processes personnel actions and documents; (7) administers the Federal life and health insurance programs; (8) administers the employee recognition, suggestion, and incentives awards programs; (9) furnishes advice and assistance in the processing of Office of Workers' Compensation Program claims; (10) advises and assists CDC officials and employees in all areas of personnel management; (11) coordinates committee management activities; (12) conducts CDC's personnel security and substance abuse programs; (13) develops, maintains, and supports information systems to conduct personnel activities and provide timely information and analyses on CDC personnel and staffing to CDC manâgement and employees.

Office of the Director (HCA571). (1) Provides leadership and technical guidance to CDC in planning, coordinating, and conducting an effective personnel and labor-management relations program for civil service, Commissioned Corps, and visiting program personnel; (2) plans, directs, and evaluates the activities of the Personnel Management Office; (3) advises the Director, CDC, and other CDC management staff on all matters relating to personnel management; (4) plans, directs and coordinates labor negotiations, collective bargaining, and management representation before third parties.

Effective Date: December 23, 1991.

William L. Roper,

Director Centers for Disease Control.

[FR Doc. 92-144 Filed 1-3-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91G-0452]

Amaranth Institute; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The food and Drug Administration (FDA) is announcing that the Amaranth Institute has filed a petition (GRASP 1G0372), proposing that amaranth grain be affirmed as generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Written comments by March 5, 1992.

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: Gerald J. Bounopane, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409(b)(5) (21 U.S.C. 321(s), (348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that James W. Lehmann, Amaranth Institute, P.O. Box 216, Bricelyn, MN 56014, has filed a petition (GRASP 1G0372), proposing that amaranth grain be affirmed as GRAS for use as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability of amaranth grain for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability for the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before March 5, 1992, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-146 Filed 1-3-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0513]

Drug Export; Ortho-Novum 7/7/7 Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that R.W. Johnson Pharmaceutical Research Institute has filed an application requesting approval for the export of the human drug Ortho-Novum 7/7/7 Tablets to Japan.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Land, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that R.W. Johnson Pharmaceutical Research Institute, Route 202, P.O. Box 300, Raritan, NJ 08869-0602, has filed an application requesting approval for the export of the drug Ortho-Novum 7/7/7 Tablets to Japan. This product is used for birth control. The application was received and filed in the Center for Drug Evaluation and Research on November 5, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 16, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: December 24, 1991.

Sammie R. Young,

Acting Director, Office of Compliance Center for Drug Evaluation and Research.

[FR Doc. 92-147 Filed 1-3-92; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OPHC-024-N]

Medicare Program; HMO Qualification Determinations and Compliance Actions

AGENCY: Health Care Financing Administration (HFCA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the names, addresses, service areas or expanded service areas, and dates of qualification or expansion of entities determined to be Federally qualified health maintenance organizations (HMOs) that received Federal qualification or service area expansions during the period November 1990 through August 1991. The notice also lists an expanded service area that was inadvertently omitted from the notice that covered the period December 1989 through October 1990. Additionally, this notice sets forth compliance actions taken by the Office of Compliance, Office of Prepaid Health Care Operations and Oversight for the period November 1990 through August 1991.

FOR FURTHER INFORMATION CONTACT:

For information on qualification determinations:

Maxine Palmore, Office of Qualification, Office of Prepaid Health Care Operations and Oversight, Health Care Financing Administration, room 4336 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, (202) 619-2174

For information on compliance actions:

Tony Mazzarella, Office of Compliance, Office of Prepaid Health Care Operations and Oversight, Health Care Financing Administration, room 4336 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, (202) 619-3555

SUPPLEMENTARY INFORMATION:

A. Office of Qualification Determinations

Regulations at 42 CFR 417.144(e) and 42 CFR 417.163 (c) and (d), promulgated under title XIII of the Public Health Service Act (the Act) (42 U.S.C. 300e), require publication of certain determinations relating to the Federal qualification of health maintenance organizations (HMOs). There are three categories of qualified HMOs: Operational, transitionally qualified, and pre-operational (see 42 CFR 417.141 for definitions of these terms).

The Office of Prepaid Health Care Operations and Oversight, HCFA, has determined that the following entities are operationally qualified HMOs under section 1310(d) of the Act (42 U.S.C. 300e-9(d)) for the following service areas:

1. *Humana Health Plan of Texas, Inc. (HHPT)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 8431 Fredericksburg Road, Suite 540, San Antonio, Texas 78229. HHPT's previously Federally qualified service area for San Antonio has been expanded. The expansion area includes Comal, Guadalupe, and Wilson Counties in their entirety, and the following zip codes in Atascosa, Bandera, Blanco, Frio, Kendall, and Medina Counties:

Atascosa County	Bandera County	Blanco County
78011	78003	78606
78012	78063	
78026		
78050		
78052		
78064		
78065		

Frio County	Kendall County	Medina County
78005	78004	78009
78057	78006	78016
78061	78027	78039
	78074	78056
		78059
		78066
		78861
		78886

Date of qualification for the service area expansion: October 12, 1990.

2. *Humana Health Plan, Inc. (HHP)* (Staff Model, see section 1310(b)(1) of the Act), 500 West Main Street, P.O. Box 1438, Louisville, Kentucky 40201. HHP's Federally qualified service area includes counties in the states of Illinois and Indiana. In the state of Illinois, Cook and Dupage Counties are included in their entirety, and the following zip codes in Kane, Lake, and Will Counties are included:

Kane County	Lake County	Will County
60505	60044	60417
60506	60045	60423
60507	60047	60448
60568	60048	60449
60010	60049	60451
60011	60060	60466
60015	60061	60481
60035	60064	60493
60037	60069	60544
60040	60073	
	60085	
	60088	
	60089	

In the state of Indiana, the following zip codes in Lake County are included:

Lake County
46303
46307
46311
46312
46319 through 46325
46327
46342
45355
46356
46373
46375 through 46377
46394
46399 through 46411

Date of qualification: February 26, 1991.

3. *Inter Valley Health Plan (IVHP)* (Group Model, see section 1310(b)(1) of the Act), 300 South Park Avenue, Suite 300, Pomona, California 91766. IVHP's previously Federally qualified service area has been expanded into the following zip codes in San Bernardino County:

San Bernardino County
92301
92367
92368
92345
92356
92358
92371
92372
92392
92394
92397

Date of qualification for the service area expansion: May 30, 1991.

4. *Total Health Care (THC)* (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 2301 Main Street, Kansas City, Missouri 64108. THC's previously Federally qualified service area has been expanded into Cass County in its entirety.

Date of qualification for the service area expansion: May 30, 1991.

5. *PacifiCare of California (PC)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 5995 Plaza Drive, Cypress, California 90630. PC's previously Federally qualified service area has been expanded into Kern County in its entirety.

Date of qualification for the service area expansion: June 21, 1991.

B. Compliance Actions

Section 1312(b)(1) of title XIII of the Act and implementing regulations at 42 CFR 417.163(c)(1) and 417.163(d)(1), which set forth procedures for enforcing the assurances given to the Secretary by Federally qualified HMOs, require us to publish a notice in the Federal Register when we determine that an HMO is not in compliance with Federal qualification requirements for HMOs, or when we

revoke an HMO's qualification. In a noncompliance notice, we direct the HMO to initiate corrective action within 30 days of the date of the notice or within any longer period that the Secretary determines to be reasonable. If the Secretary determines to be reasonable. If the Secretary determines that a qualified HMO has filed to initiate corrective action in accordance with the notice of noncompliance or has not carried out or refuses to carry out corrective action, the Secretary will revoke the HMO's qualification and will notify the HMO of this action. In this notification, we provide the HMO with an opportunity to request a reconsideration of the revocation, including a fair hearing. If an HMO requests a reconsideration of the revocation decision, the HMO will retain its Federally qualified status throughout the reconsideration process. If the reconsideration decision upholds the previous revocation decision, the Secretary will reissue a revocation notice, and no further administrative remedy is available to the HMO. The final decision (either to revoke Federal qualification or restore the HMO to compliance status) resulting from the reconsideration process will be published in the **Federal Register.**

The Office of Prepaid Health Care Operations and Oversight gives notice of the following compliance actions affecting Federally qualified HMOs for the period November 1990 through August 1991:

1. Letters of noncompliance followed by notices of revocation:

We have issued letters of noncompliance followed by notices of revocation of Federal qualification to the two HMOs listed below. Both HMOs have requested reconsideration. Therefore, as noted above, these HMOs retain their Federally qualified status until we make a final decision as a result of the reconsideration process.

a. *Capital Area Community Health Plan (CHP), Albany, New York*

On December 13, 1990, we issued a letter of noncompliance to CHP. We initiated the compliance action due to CHP's failure to remove language imposing impermissible limits on home health benefits from its subscriber contracts. Neither title XIII of the Act nor the regulations permit a Federally qualified HMO to place across-the-board time or cost limitations on medically necessary, prescribed home health services for commercial (non-Medicare/Medicaid) enrollees. We directed CHP to make the required revisions and to provide notice to its members and providers of the change. CHP failed to respond to the notice of noncompliance and has failed to make the required revisions to the subscriber contract and to notify members and providers of the change. Therefore, on May 21, 1991, we notified CHP that its Federal qualification was being revoked. By letter dated May 30, 1991, CHP formally requested reconsideration, including a fair hearing, of the revocation decision. As of the date of this notice, the fair hearing has yet to be scheduled.

b. *Independent Health Plan of Pennsylvania (IHP), Erie, Pennsylvania*

On February 28, 1991, we issued a letter of noncompliance to IHP. We initiated the compliance action because of IHP's termination of its HMO product and membership. We directed IHP to submit information and to implement corrective action to reinstate its HMO program as a responsible means of addressing its lack of prepaid operations. IHP failed to submit a corrective action plan that addressed resumption of its prepaid health care plan. Therefore, on May 15, 1991, we notified IHP that we were revoking its Federal qualification. By letter dated May 23, 1991, IHP formally requested reconsideration, including a fair hearing, of the revocation decision. As of the date of this notice, the fair hearing has yet to be scheduled.

2. Letters of noncompliance:

We have issued letters of noncompliance to the three following HMOs:

a. *Kaiser Foundation Health Plan, Inc., Hawaii Region*

On May 21, 1991, we issued a letter of noncompliance to Kaiser Foundation Health Plan, Inc., Hawaii Region. We initiated the compliance action because of Kaiser's policy imposing impermissible limits on home health benefits. Neither title XIII of the Act nor the regulations permit a Federally qualified HMO to place across-the-board time or cost limitations on medically necessary, prescribed home health services for commercial (non-Medicare/Medicaid) enrollees. Kaiser was also determined to be placing impermissible limitations on the provision of services for infertility. We directed Kaiser to amend its subscriber agreement to eliminate the impermissible limits, to notify its members and providers of the change, and to submit a draft of the revised subscriber agreement and a copy of the notice to members and providers to the Office of Prepaid Health Care Operations and Oversight.

b. *Kaiser Foundation Health Plan of Massachusetts, Inc.*

On May 21, 1991, we issued a letter of noncompliance to Kaiser Foundation Health Plan of Massachusetts, Inc. We initiated the compliance action because of Kaiser's policy imposing impermissible limits on home health benefits. Neither title XIII of the Public Health Service Act nor the regulations permit a Federally qualified HMO to place across-the-board time or cost limitations on medically necessary, prescribed home health services for commercial (non-Medicare/Medicaid) enrollees. We directed Kaiser to amend its subscriber agreement to eliminate the impermissible limits, to notify its members and providers of the change, and to submit a draft of the revised subscriber agreement and a copy of the notice to members and providers to the Office of Prepaid Health Care Operations and Oversight.

c. *Kaiser Foundation Health Plan, Inc., Northern California Region*

On June 17, 1991, we issued a letter of noncompliance to Kaiser Foundation Health Plan, Inc., Northern California Region. We initiated the compliance action because of Kaiser's policy imposing impermissible limits on home health benefits. Neither title XIII of the Act nor the regulations permit a Federally qualified HMO to place across-the-board time or cost limitations on medically necessary, prescribed home health services for commercial (non-Medicare/Medicaid) enrollees. We directed Kaiser to amend its subscriber agreement to eliminate the impermissible limits, to notify its members and providers of the change, and to submit a draft of the revised subscriber agreement and a copy of the notice to members and providers to the Office of Prepaid Health Care Operations and Oversight.

3. Notices of revocation:

Organization	Date Issued	Reason
Share Health Plan of Illinois, Inc., Itasca, Illinois.	05/24/91	Voluntary relinquishment.
Share Health Plan of Iowa, Inc., West Des Moines, Iowa.	07/10/91	Voluntary relinquishment.
Southern Health Services, Inc., Richmond, Virginia.	08/07/91	Voluntary relinquishment.

C. Availability of Additional Information

A cumulative list and additional information about Federally qualified HMOs may be obtained by writing to the following address:

Office of Prepaid Health Care Operations and Oversight, Health

Care Financing Administration, Room 4360 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201

The list also may be obtained by visiting that office between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday, except for Federal holidays. Interested persons should contact Margie Ridley for an appointment, telephone (202) 619-2756.

((42 U.S.C. 300e) title XIII of the Public Health Service Act)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; 93.774, Medicare-Supplementary Medical Insurance)

Dated: December 18, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 92-109 Filed 1-3-92; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-967-4230-15]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Koniag, Inc., Regional Native Corporation. The lands involved are in the vicinity of Kodiak, Alaska.

Serial No.	Land description	Approximate acreage
AA-11725	Sec. 26, T. 33 S., R. 30 W., Seward Meridian, Alaska.	1.0
AA-10602	Sec. 17, T. 35 S., R. 28 W., Seward Meridian, Alaska.	7.75

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until February 3, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 92-192 Filed 1-3-92; 8:45 am]

BILLING CODE 4310-JA-M

Fish and Wildlife Service

Extension of Comment Period for Permit Applications

This notice serves to extend the comment period for the following permit applications until January 15, 1992: Florida Game and Fresh Water Fish Commission (PRT-763741), Lowry Park Zoo (PRT-763742), Jacksonville Zoo (PRT-763744), Miami MetroZoo (PRT-763740), and White Oak Plantation (PRT-763743). The Florida Game and Fresh Water Fish Commission requested a 2-year permit to take (capture and remove from the wild) a maximum of 6 Florida panther (*Felis concolor coryi*) kittens per year and up to 4 adults the first year and up to 2 adults the second year, to be placed in the above mentioned Florida zoological facilities for the purpose of enhancement of propagation and survival of the species.

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, Virginia 22203 and must be received by the Director by January 9, 1992.

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, or by appointment during normal business hours (7:45-4:15) in, by January 9, 1992: 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). Please refer to the PRT number when requesting a copy of the application(s) and when submitting comments.

Dated: December 27, 1991.

R.K. Robinson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-12 Filed 1-3-92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-333]

Certain Woodworking Accessories; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and provisional acceptance of motion for temporary relief.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on November 25, 1991, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cantlin Incorporated, 7 Deer and Road, Lincoln, Massachusetts 01773. Supplements were filed on December 16 and 19, 1991.

The complaint, as supplemented, alleges violations of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain woodworking accessories by reason of alleged infringement of claims 1-18 of U.S. Letters Patent 4,805,505, and that there exists an industry in the United States as required by subsection (a)(2) of section 337. The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent general exclusion order and permanent cease and desist orders.

The motion for temporary relief requests that the Commission issue a temporary exclusion order and temporary cease and desist orders prohibiting the importation into and the sale within the United States after importation of infringing woodworking accessories, during the course of the Commission's investigation.

ADDRESSES: The complaint and the motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202-205-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202-205-1810.

FOR FURTHER INFORMATION CONTACT: James M. Gould, Esq., or Gabrielle Siman, Esq., Office of Unfair Import

Investigations, U.S. International Trade Commission, telephone 202-205-2578 or 202-205-2573, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12. The authority for provisional acceptance of the motion for temporary relief is contained in § 210.24(e) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.24(e).

SCOPE OF INVESTIGATION: Having considered the complaint and the motion for temporary relief, the U.S. International Trade Commission, on December 30, 1991, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain woodworking accessories by reason of alleged infringement of claims 1-17 or 18 U.S. Letters Patent 4,805,505, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) Pursuant to § 210.24(e)(8) of the Commission's Interim Rules of Practice and Procedure, the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, be provisionally accepted and referred to an administrative law judge.

(3) For the purposes of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Cantlin Incorporated, 7 Deer Run Road, Lincoln Massachusetts 01773.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint and motion for temporary relief are to be served:

Trend-lines, Inc., 170 Commercial Street, Malden, Massachusetts 02148.

Taiwan Zest Industrial Co., Ltd., 2nd Floor, No. 1-156 Mei Ts'un Road, Taichung City, Taiwan.

Woodever Products Co., Ltd., Room H, 10th Floor, No. 24 Chi-Lin Road, Taipei, Taiwan.

An Yun Industrial Co., Ltd., 64-2 Chiu-Sir Lane, Peitun District, Taichung, Taiwan.

(c) James M. Gould, Esq., and Gabrielle Siman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401, Washington, DC 20436, who shall be the Commission investigative attorneys, parties to this investigation; and

(4) For the investigation and temporary relief proceedings so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint, the motion for temporary relief and the notice of investigation must be submitted by the named respondents in accordance with §§ 210.21 and 210.24 of the Commission's Interim Rules of Practice and Procedure. Pursuant to §§ 201.16(d), 210.21(a), and 210.24(e)(9) of the Commission's Rules, such responses will be considered by the Commission if received not later than ten (10) days after the date of service by the Commission of the complaint, the motion for temporary relief and the notice of investigation. Extensions of time for submitting responses to the complaint, the motion for temporary relief and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, motion for temporary relief and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: December 30, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-187 Filed 1-3-92; 8:45 am]

BILLING CODE 7020-02-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential materials. Notice is hereby given that, in accordance with section 104 of title I of the Presidential Recordings and Materials Preservation Act (88 Stat. 1695; 44 U.S.C. 2111 note) and section 1275.42(b) of the Public Access Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventoried, and prepared for public access integral file segments of materials among the Nixon Presidential materials.

DATES: The National Archives intends to make the integral file segments described in this notice available to the public beginning February 19, 1992. 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, privilege, or defense before February 12, 1992.

ADDRESSES: The materials will be made available to the public at the National Archives' facility located at 845 South Pickett Street, Alexandria, Virginia.

Petitions concerning access 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 integral file segments of textual materials to be opened consist of 38.3 cubic feet.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. This is the seventh of a series of openings of Central Files; the previous openings were on December 1, 1986; March 22, 1988; December 9, 1988; July 17, 1989; December 15, 1989; and August 22, 1991.

Some of the materials designated for opening on February 19, 1992, were selected from the Subject Files of the Central Files. The Subject Files are based on an alphanumeric file scheme of 61 primary subject categories. Listed below are the primary subject categories of the Subject Files that will be made available to the public on February 19, 1992.

Subject category Federal Government (FG)	Volume (cubic feet)
FG 6-10 Office of Special Trade Representative	.3
FG 14 Department of the Army	1.0

Subject category Federal Government (FG)	Volume (cubic feet)
FG 15 Department of the Navy	1.0
FG 16 Department of the Air Force	1.0
	3.3

Two file groups from the Staff Member and Office Files will also be made available to the public. These consist of materials that were transferred to Central Files but were not incorporated into the Subject Files. Listed below are the Staff Member and Office Files that will be made available to the public on February 19, 1992.

File Group	Volume (cubic feet)
Andre Buckles	10.0
Edwin Harper	25.0
	35.0

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 February 19, 1992:

	Volume (cubic feet)
Previously restricted material	less than .1

Public access to some of the items in the file segments will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

Dated: December 30, 1991.

Claudine J. Wieher,

Acting Archivist of the United States.

[FR Doc. 92-155 Filed 1-3-92; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

SES Performance Review Board

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of members of the Performance Review Board for the National Endowment of the Arts. This notice supersedes all previous notices of the PRB membership of the Agency.

DATE: January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Leon F. Williams, Assistant Director of Personnel, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., room 208, Washington, DC 20506, (202) 682-5405.

SUPPLEMENTARY INFORMATION: Sec. 4314(c) (1) through (5) of title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts: Laurence M. Baden, Deputy Chairman for Management, Ana M. Steele, Director of Program Coordination, Anne-Imelda Radice, Senior Deputy Chairman, Thomas S. Kingston, Assistant Chairman for Operations (NEH).

Steven M. Klink,

Director of Personnel, National Endowment for the Arts.

[FR Doc. 92-143 Filed 1-3-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biotic Systems and Resources; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for award. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of U.S.C. 552b (c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Biotic Systems and Resources.

Dates & Times: January 22 & 23, 1992; 8:30 a.m.-5 p.m.

Location: National Science Foundation Conference & Training Center, 1110 Vermont Avenue NW., Washington, DC 20005, room 500E.

Type of Meeting: Closed.

Agenda: Review and evaluate Doctoral Dissertation Research Proposals.

Contact Person: Penelope Firth, Program Director, Special Programs, room 215, National Science Foundation, Washington, DC 20550, (202) 357-3978.

Dated: December 30, 1991.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-123 Filed 1-3-92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Computer and Computation Research, Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463 as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Computation Research.

Date and Time: January 23 and 24, 1992; 9 a.m.-5 p.m.

Place: Room 500D—Albert Schweitzer Room, 1110 Vermont Avenue, NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Bruce H. Barnes, Acting Director, Division of Computer and Computation Research, room 304, National Science Foundation, 1800 G St., NW., Washington, DC 20550, telephone: (202) 357-9747, email: bbarnes@note.nsf.gov Anyone planning to attend this meeting should notify Dr. Barnes no later than January 15, 1992.

Summary Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee will provide advice and recommendations concerning support of Computer Research.

Agenda:

Thursday, January 23, 1992

9 a.m. Welcome and Discussion of Goals for the Meeting and Agenda (B. Barnes and G. Andrews)
9:15 a.m. Approval of October 1990 Minutes and Discussion of Informational Items
9:45 a.m. Workshop Reports
10:15 a.m. Break
10:30 a.m. Divisional Overview and Status (B. Barnes)
11 a.m. Special Initiatives
12 noon Lunch
1 p.m. Planning and Organizing Session
1:30 p.m. Open Discussion on Funding Priorities for the Division
3 p.m. CISE Overview (N. Habermann—tentative)
4 p.m. Continued Discussion

5 p.m. Adjournment

Friday, January 24, 1992

9 a.m. Discussion of Trends in Computer Research and Their Impact on the Divisions Programs (G. Andrews and B. Barnes
12 noon Lunch
1 p.m. Remarks from Walter Massey, Director, NSF (tentative)
2 p.m. Closing Remarks and Discussion
3 p.m. Adjournment

Dated: December 30, 1991.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-126 Filed 1-3-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Cross-Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended) the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross-Disciplinary Activities.

Date and Time: January 22, 1992; 8:30 a.m. to 5 p.m.

Place: Duke University, Department of Computer Science, Durham, NC 27706.

Type of Meeting: Closed.

Contact Person: John C. Cherniavsky, Acting Head, Office of Cross-Disciplinary Activities, room 436, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7349.

Purpose of Meeting: To Provide advice and recommendations concerning a research proposal submitted to NSF for financial support.

Agenda: Site visit to review and evaluate the University of Washington's Research Proposal.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: December 30, 1991.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-121 Filed 1-3-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Cross-Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended) the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross-Disciplinary Activities.

Date and Time: January 24, 1992; 8:30 a.m. to 5 p.m.

Place: University of California, Department of Computer Science, Los Angeles, CA 90024.

Type of Meeting: Closed.

Contact Person: John C. Cherniavsky, Acting Head, Office of Cross-Disciplinary Activities, room 436, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7349.

Purpose of Meeting: To provide advice and recommendations concerning a research proposal submitted to NSF for financial support.

Agenda: Site visit to review and evaluate the University of Washington's Research Proposal.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: December 30, 1991.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-122 Filed 1-3-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Cross-Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended) the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross-Disciplinary Activities.

Date and Time: January 16, 1992; 8:30 a.m. to 5 p.m.

Place: University of Washington, Department of Computer Science, Seattle, WA 98195.

Type of Meeting: Closed.

Contact Person: John C. Cherniavsky, Acting Head, Office of Cross-Disciplinary Activities, Room 436, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7349.

Purpose of Meeting: To provide advice and recommendations concerning a research proposal submitted to NSF for financial support.

Agenda: Site visit to review and evaluate the University of Washington's Research Proposal.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: December 30, 1991.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-124 Filed 1-3-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Materials Research; Meetings

Name: Special Emphasis Panel in Materials Research.

Type of Meeting: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Purpose of Meetings: To provide advice and recommendations concerning support for Materials Research Laboratories.

Contact: Dr. W. Lance Haworth, Program Director, Materials Research Laboratories, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550 Telephone (202) 357-9791.

Meeting Locations and Schedules

A. Materials Research Center, The Technological Institute, Northwestern University, Evanston, IL 60201..... 01/20/92..... 7 p.m.-9 p.m.,
01/21/92..... 8 a.m.-9 p.m.,
01/22/92..... 8 a.m.-5 p.m.

B. Laboratory for Research on the Structure of Matter, University of Pennsylvania, 3231 Walnut Street, Philadelphia, PA 19104.	01/26/92	7 p.m.–9 p.m.
	01/27/92	8 a.m.–9 p.m.
	01/28/92	8 a.m.–5 p.m.
C. Materials Science Center, Clark Hall, Cornell University	02/05/92	7 p.m.–9 p.m.
	02/06/92	8 a.m.–9 p.m.
	02/07/92	8 a.m.–5 p.m.
D. Materials Research Laboratories, University of California at San Diego, 9500 Gilman Drive, La Jolla, CA 92093–0934.	02/18/92	7 p.m.–9 p.m.
	02/19/92	8 a.m.–9 p.m.
	02/20/92	8 a.m.–5 p.m.
E. Materials Research Laboratory, North Carolina State University, Raleigh, NC 27695–7919	02/26/92	7 p.m.–9 p.m.
	02/27/92	8 a.m.–9 p.m.
	02/28/92	8 a.m.–5 p.m.
F. Materials Research Laboratory, University of California at Santa Barbara, Santa Barbara, CA 93106	03/24/92	7 p.m.–9 p.m.
	03/25/92	8 a.m.–9 p.m.
	03/26/92	8 a.m.–5 p.m.
G. Materials Research Laboratory on X-Rays and Materials Processing, University of Wisconsin-Madison, 750 University Avenue, Madison, WI 53706.	03/30/92	7 p.m.–9 p.m.
	03/31/92	8 a.m.–9 p.m.
	04/01/92	8 a.m.–5 p.m.

Dated: December 30, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–127 Filed 1–3–92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Research in Teaching and Learning; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Advisory Panel for Research in Teaching and Learning.

Date and Time: January 16, 1992; 8 a.m. to 5:30 p.m., January 17, 1992; 8 a.m. to 3 p.m.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Raymond J. Hannapel and Barbara Lovitts, Program Directors, National Science Foundation, 1800 G Street, NW., room 635–A, Washington, DC 20550. Telephone: (202) 357–7071.

Purpose of Meeting: To provide advice and recommendations concerning Research in Teaching and Learning proposals.

Agenda: Review and evaluate Research in Teaching and Learning proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b (c)(4) and (6) the Government in the Sunshine Act.

Dated: December 30, 1991.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92–125 Filed 1–3–92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

Public Service Company of New Hampshire Seabrook Station; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation (NRC), has issued a Decision concerning a request filed pursuant to 10 CFR 2.206 by Mr. Michael C. Sinclair. The Petition requested that the NRC withhold a determination on whether the directive in ALAB–941 regarding the December 1990 exercise for the Seabrook Nuclear Station was satisfied. ALAB–941 describes the scope of the June 1988 full-participation exercise at Seabrook and directs that a deficiency in the exercise be cured in a subsequent exercise.

The Director of the Office of Nuclear Reactor Regulation has determined that the Petition should be denied. The reasons for this Decision are explained in the "Director's Decision Under 10 CFR 2.206," (DD 91–7), which is available for public inspection in the Commission's Public Document Room, in the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Seabrook facility located at the Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

A copy of the Decision will be filed with the office of the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland, this 27th day of December 1991.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92–160 Filed 1–3–92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–219]

GPU Nuclear Corporation; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 156 to Facility Operating License No. DPR–16 issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications section 4.2.A and 4.2.C.1 to delete restriction that the refueling outage interval is not to exceed 20 months. This modification accommodates implementation of a 21-month operating cycle with a 3-month refueling outage.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 25, 1991 (56 FR 48588). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated August 19, 1991, as revised August 29, 1991, (2) Amendment No. 156 to License No. DPR-16. (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects-I/II.

Dated at Rockville, Maryland this 27th day of December 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-161 Filed 1-3-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF STATE

Office of the Legal Adviser; Submission of Claims Against Iraq to the United Nations Compensation Commission

[Public Notice 1545]

This notice concerns the procedures for filing a claim against Iraq with the United Nations Compensation Commission for losses, damage or injury suffered as a result of Iraq's illegal invasion and occupation of Kuwait. It supplements Public Notice 148 (56 **Federal Register** 47979, September 23, 1991). For further information, and to obtain claim forms, contact Ronald J. Bettauer, Assistant Legal Adviser for International Claims and Investment Disputes, 2100 K Street, NW., suite 402, Washington, DC 20037-7180. Telephone (202) 632-5040.

The United Nations Compensation Commission has approved and circulated forms to be used by individual claimants in filing claims for losses up to $100,000 sustained as a result of Iraq's illegal invasion and occupation of Kuwait. Fixed amounts may be claimed for departure ($2500 or $4000, depending on whether the claimant is filing additional claims), serious personal injury ($2500), and the death of a spouse, child or parent ($2500) without documentation of the amount of loss. Where adequate documentation is available, claimants may claim compensation in any amount up to $100,000. Individuals whose losses exceed $100,000 can file for the first $100,000 now and claim the rest at a later stage.

Instructions on how to complete the forms will be sent with the claim forms. Claimants should note that, since an expedited, simplified process is envisaged, the Commission has decided that no compensation will be given to pay attorneys' fees or other expenses incurred in the preparation of a claim. In addition, any compensation, whether in cash or in kind, received from any source will be deducted from the total amount of losses suffered.

A claim form must be filled out and returned to the Office of the Assistant Legal Adviser for International Claims and Investment Disputes regardless of whether claimants have already registered their claims with the Office of Foreign Assets Control in the Department of the Treasury. The Assistant Legal Adviser's office will then consolidate the claims and submit them to the Compensation Commission. The Department will submit the claims of United States citizens and, as authorized by the claims criteria adopted by the Governing Council of the Compensation Commission, will be prepared to consider submitting claims of residents of the United States.

As of July 1, 1992, the Commission will begin processing claims submitted by governments up to that date. The final deadline for the submission of claims by Governments is July 1, 1993, but it is in claimants' interest to have their claims submitted as early as possible. The Department needs time to review the forms and documentation received, follow up with claimants where necessary, and prepare a consolidated statement summarizing the claims. Therefore, claimants wishing to ensure that their claim is considered as soon as possible should return completed form(s) and documentation by March 1, 1992. The Department urges claimants to file by this date, but in any event no later than March 1, 1993.

Dated: December 23, 1991.

Ronald J. Bettauer,

Assistant Legal Adviser for International Claims and Investment Disputes.

[FR Doc. 92-116 Filed 1-3-92; 8:45 am]

BILLING CODE 4710-08-M

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 1544]

Conservation Measures for Antarctic Fishing Under the Auspices of the Commission for the Conservation of Antarctic Marine Living Resources

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs, State.

ACTION: Notice.

SUMMARY: At its Tenth Annual Meeting in Hobart, Tasmania, October 21 to November 1, 1991, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted the conservation measures listed below, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These were agreed upon in accordance with article IX, paragraph 6(A) of the Convention for the Conservation of Antarctic Marine Living Resources. The measures restrict overall catches of certain species of fish, prohibit the taking of certain species of fish, list the fishing seasons, and define reporting requirements. In addition, a resolution was adopted to protect the Seal Islands as a site for the CCAMLR Ecosystem Monitoring Program (CEMP).

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments on or before February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ray Arnaudo, Chief, Division of Polar Affairs, Office of Oceans Affairs (OES/OA), room 5801, Department of State, Washington, DC 20520, (202) 647-3262.

SUPPLEMENTARY INFORMATION:

Conservation Measures Adopted at the Tenth Meeting of CCAMLR

At its Tenth Annual Meeting in Hobart, Tasmania, October 21 to November 1, 1991, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) adopted the following fifteen conservation

measures and one resolution. The conservation measures addressing catch limitations were adopted in accordance with Conservation measure 7/V and therefore enter into force immediately.

Conservation Measures Adopted This Year

CONSERVATION MEASURE 29/X, Minimisation of the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research in the Convention Area

The Commission,

Noting the need to reduce the incidental mortality of seabirds during longline fishing by minimizing their attraction to the fishing vessels and by preventing them from attempting to seize baited hooks, particularly during the period when the lines are set,

Recognizing that successful techniques for reducing the mortality of albatrosses have been employed in the longline fishery for tuna immediately to the north of the Convention Area,

Agrees to the following measures to reduce the possibility of incidental mortality of seabirds during longline fishing.

1. Fishing operations shall be conducted in such a way that the baited hooks sink as soon as possible after they are put in the water.

2. During the setting of longlines at night only, the minimum ship's lights necessary for safety shall be used.

3. Trash and offal are not to be dumped while longline operations are in progress.

4. A streamer line designed to discourage birds from settling on baits during deployment of longlines shall be towed during daylight operations. The specification of the streamer line and its method of deployment is given in the Appendix to this Measure.

5. This Measure shall not apply to designated research vessels investigating better methods for reducing incidental mortality of seabirds.

CONSERVATION MEASURE 30/X, Net Monitor Cables

The use of net monitor cables on harvesting vessels in the CCAMLR Convention Area is prohibited from the 1994/95 fishing season.

CONSERVATION MEASURE 31/X, Notification that Members are Considering Initiating a New Fishery

The Commission,

Recognising that in the past, Antarctic fisheries have been initiated in the Convention Area before sufficient information was available upon which to base management advice,

Noting that in recent years new fisheries have started without adequate information being available to evaluate either the fishery potential or the possible impacts on the target stocks or species dependent on them,

Believing that without prior notification of a new fishery, the Commission is unable to fulfill its function under article IX, hereby adopts the following Conservation Measure in accordance with article IX of the Convention:

1. A new fishery, for the purposes of this Conservation Measure, is a fishery on a species using a particular fishing method in a statistical subarea for which:

(i) Information on distribution, abundance, demography, potential yield and stock identity from comprehensive research/surveys or exploratory fishing have not been submitted to CCAMLR; or

(ii) Catch and effort data have never been submitted to CCAMLR; or

(iii) Catch and effort data from the two most recent seasons in which fishing occurred have not been submitted to CCAMLR.

2. A Member intending to develop a new fishery shall notify the Commission not less than three months in advance of the next regular meeting of the Commission, where the matter shall be considered. The Member shall not initiate a new fishery pending the process specified in paragraphs 4 and 5 below;

3. The notification shall be accompanied by as much of the following information as the Member is able to provide:

(i) The nature of the proposed fishery including target species, methods of fishing, proposed region and any minimum level of catches that would be required to develop a viable fishery;

(ii) Biological information from comprehensive research/survey cruises, such as distribution, abundance, demographic data and information on stock identity;

(iii) Details of dependent and associated species and the likelihood of them being affected by the proposed fishery; and

(iv) Information from other fisheries in the region or similar fisheries elsewhere that may assist in the valuation of potential yield;

4. The information provided in accordance with paragraph 3, together with any other relevant information, shall be considered by the Scientific Committee, which shall then advise the Commission;

5. After its review of the information on the proposed mew fishery, taking full account of the recommendations and the advice of the Scientific Committee, the Commission may then take such action as it deems necessary.

CONSERVATION MEASURE 32/X, Precautionary Catch Limitations on Euphausia superba in Statistical Area 48

The total catch of *Euphausia superba* in Statistical Area 48 shall be limited to 1.5 million tonnes in any fishing season. A fishing season begins on 1 July and finishes on 30 June of the following year.

This limit shall be kept under review by the Commission, taking into account the advice of the Scientific Committee. Precautionary limits to be agreed by the Commission on the basis of advice of the Scientific Committee shall be applied to subareas, or on such other basis as the Scientific Committee may advise, if the total catch in Statistical Subareas 48.1, 48.2 and 48.3 in any fishing season exceeds 620,000 tonnes.

For the purpose of implementing this Conservation Measure the catches shall be reported to the Commission on a monthly basis.

CONSERVATION MEASURE 33/X, Prohibition of Directed Fishery on Champsocephalus gunnari in Statistical Subarea 48.3 for the 1991/92 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

Directed fishing on *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited in the 1991/92 season, defined as the period from 2 November 1991 to the end of the Commission meeting in 1992.

CONSERVATION MEASURE 34/X, Prohibition of Directed Fishery on Notothenia gibberifrons, Chaenocephalus aceratus, Pseudochaenicthys georgianus, Notothenia squamifrons, and Patagonothen guntheri, in Statistical Subarea 48.3 for the 1991/92 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

Directed fishing on *Notothenia gibberifrons, Chaenocephalus aceratus, Pseudochaenicthys georgianus, Notothenia squamifrons, and Patagonothen guntheri* in Statistical Subarea 48.3 is prohibited in the 1991/92 season, defined as the period from 2 November 1991 to the end of the Commission meeting in 1992.

CONSERVATION MEASURE 35/X, Catch Limit on Dissostichus eleginoides in Statistical Subarea 48.3 for the 1991/92 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/X:

1. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.3 caught in the 1991/92 season shall be limited to 3500 tonnes.

2. For the purposes of the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 1991/92 fishing season is defined as the period from 2 November 1991 to the end of the Commission meeting in 1992.

3. For the purpose of implementing this Conservation Measure:

(i) the Catch Reporting System set out in Conservation Measure 36/X shall apply in the 1991/92 season, commencing on 2 November 1991.

(ii) the Data Reporting System set out in Conservation Measure 37/X shall apply in the 1991/92 season, commencing on 2 November 1991.

CONSERVATION MEASURE 36/X, Five-day Catch and Effort Reporting System in Statistical Subarea 48.3 for the 1991/92 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V where appropriate:

1. For the purposes of this Catch and Effort Reporting System the calendar month shall be divided into six reporting periods, viz: day 1 to day 5, day 6 to day 10, day 11 to day 15, day 16 to day 20, day 21 to day 25 and day 26 to the last day of the month. These reporting periods are hereinafter referred to as periods A, B, C, D, E and F.

2. At the end of each reporting period, each Contracting Party shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall, by cable or telex, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary not later than the end of the next reporting period.

3. Such reports shall specify the month and reporting period (A, B, C, D, E or F) to which each report refers.

4. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the area, of the total catch taken during the reporting period, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season. The estimate shall be based on a projection forward of the trend in daily catch rates, obtained using linear regression techniques from a number of the most recent catch reports.

5. At the end of every five reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the five most recent reporting periods, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season.

6. If the estimated date of completion of the TAC is within five days of the date on which the Secretariat received the report of the catches, the Executive Secretary shall inform all Contracting Parties that the fishery will close on that estimated day or on the day on which the report was received, whichever is the later.

CONSERVATION MEASURE 37/X, Effort and Biological Data Reporting System for Dissostichus eleginoides Statistical Subarea 48.3 for the 1991/92 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. At the end of each reporting period, as defined in Conservation Measure 36/X, each Contracting party shall obtain from each of its vessels the haul-by-haul data required to complete the CCAMLR fine-scale catch and effort data form for longline fisheries (Form C2, Ver. 2). It shall transmit those data to the Executive Secretary not later than the end of the following reporting period.

2. At the end of each month, each contracting party shall obtain from each of its vessels a representative sample of length composition measurements from the fishery (Form B2, Ver. 4). It shall transmit those data to the Executive Secretary not later than the end of the following month.

3. Failure by a Contracting Party to provide the haul-by-haul data for three consecutive reporting periods shall result in the closure of the fishery to vessels of that Contracting Party. If the Executive Secretary has not received haul-by-haul data for two consecutive reporting periods he shall notify the Contracting Party that the fishery will be closed to that Contracting party unless those data (including arrears of data) are provided by the end of the next reporting period. If at the end of the next reporting period those data have still not been provided, the Executive Secretary shall notify all Contracting Parties of the closure of the fishery to vessels of the Contracting Party which has failed to supply the data as required.

4. Failure by a Contracting Party to provide the length composition data for three consecutive months shall result in the closure of the fishery to vessels of that Contracting Party. If the Executive Secretary has not received length composition data for two consecutive months he shall notify the Contracting Party unless those data (including arrears of data) are provided by the end of the next month. If at the end of the next month those data have still not been provided, the Executive Secretary shall notify all Contracting Parties of the closure of the fishery to vessels of the Contracting Party which has failed to supply the data as required.

CONSERVATION MEASURE 38/X, Limitation of the Total Catch of Eletrona carlsbergi in Statistical Subarea 48.3 for the 1991/92 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. For the purpose of this Conservation Measure the fishing season is defined as the period from 2 November 1991 to the end of the Commission meeting in 1992.

2. The total catch of *Electrona carlsbergi* in the 1991/92 season shall not exceed 345,000 tonnes in Statistical Subarea 48.3.

3. In addition, the total catch of *Electrona carlsbergi* in the 1991/92 season shall not exceed 53,000 tonnes in the Shag Rocks region, defined as the area bounded by 52°30'S, 40°W; 52°30'S, 44°W; 54°30'S, 40°W and 54°30'S, 44°W.

4. In Statistical Subarea 48.3, the by-catch of *Notothenia gibberifrons* shall not exceed 500 tonnes and the by-catch of any of the following species: *Notothenia rosii, Notothenia squamifrons, Chaenocephalus aceratus, Pseudochaenicthys georgianus, and Champsocephalus gunnari* shall not exceed 300 tonnes.

5. The fishery in Statistical Subarea 48.3 shall close if the by-catch of any of the species named in paragraph 4 above reaches their by-catch limit of if the total catch of *Electrona carlsbergi* reaches 245,000 tonnes, whichever comes first.

6. The fishery in the Shag Rocks region shall close if the by-catch of any of the species named in paragraph 4 above reaches their by-catch limit or if the total catch of *Electrona carlsbergi* reaches 53,000 tonnes, whichever comes first.

7. If, in the course of the directed fishery for *Electrona carlsbergi*, the by-catch of any one haul of any of the species named in paragraph 4 above exceeds 5%, the fishing vessel shall

move to another fishing ground within the subarea.

8. For the purpose of implementing this Conservation Measure:

(i) The Catch Reporting System set out in Conservation Measure 40/X shall apply in the 1991/92 season; and

(ii) The Data Reporting System set out in Conservation Measure 39/X shall apply in the 1991/92 season.

CONSERVATION MEASURE 39/X, Biological Data Reporting System for Electrona carlsbergi, in Statistical Subarea 48.3 for the 1991/92 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V.

Each month the length composition of a minimum of 500 fish, randomly collected from the commercial fishery, will be measured and the information passed to the Executive Secretary not later than the end of the month following.

CONSERVATION MEASURE 40/X, Monthly Catch and Effort Reporting System

This Conservation Measure is adopted in accordance with Conservation Measure 7/V where appropriate:

1. For the purposes of this Catch and Effort Reporting System the reporting period shall be defined as one calendar month.

2. At the end of each reporting period, each Contracting Party shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall, by cable or telex, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary not later than the end of the next reporting period.

3. Such reports shall specify the month to which each report refers.

4. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties of the total catch taken during the reporting period, the total aggregate catch for the season to date, together with an estimate of the date upon which the total allowable catch is likely to be reached for that season. The estimate shall be based on a projection forward of the trend in daily catch rates, obtained using linear regression techniques from a number of the most recent catch reports.

5. In the case of finfish, if the estimated date of completion of the TAC is within one reporting period of the date on which the Secretariat received the report of the catches, the Executive Secretary shall inform all Contracting Parties that the fishery will close on that estimated day or on the day on which the report was received, whichever is the later.

CONSERVATION MEASURE 41/X, Prohibition of Directed Fishing for Finfish in Statistical Subarea 48.1 for the 1991/92 Season

Taking of finfish, other than for scientific research purposes, in Statistical Subarea 48.1 is prohibited in the 1991/92 season, defined as the period from 2 November 1991 to the end of the Commission meeting in 1992.

CONSERVATION MEASURE 42/X, Prohibition of Directed Fishing for Finfish in Statistical Subarea 48.2 for the 1991/92 Season

Taking of finfish, other than for scientific research purposes, in Statistical Subarea 48.2 is prohibited in the 1991/92 season, defined as the period from November 1991 to the end of the Commission meeting in 1992.

CONSERVATION MEASURE 43/X, Prohibition of Directed Fishing for Notothenia squamifrons Statistical Division 58.4.4 (Ob and Lena Banks) for the 1991/92 Season

Taking of *Notothenia squamifrons*, other than for scientific research purposes, in Statistical Division 58.4.4 (Ob and Lena Banks) is prohibited in the 1991/92 season, defined as the period from 2 November 1991 to the end of the Commission meeting in 1992.

RESOLUTION 8/X, Protection of the Seal Island CEMP Site

1. The Commission noted that a program of long-term studies is being undertaken at the Seal Islands, South Shetland Islands, as part of the CCAMLR Ecosystem Monitoring Program (CEMP). Recognizing that these studies may be vulnerable to accidental or willful interference, the Commission expressed its concern that this CEMP site, the scientific investigations, and the Antarctic marine living resources therein be protected.

2. Therefore, the Commission considers it appropriate to accord protection to the Seal Islands CEMP Site.

3. Members are requested to comply, on a voluntary basis, with the provisions of the draft management plan for the Seal Islands CEMP Site pending the conclusion of consultations with SCAR, the Antarctic Treaty Consultative Parties and, if appropriate, the Contracting Parties to other components of the Antarctic Treaty System.

4. It was agreed that, in accordance with article X, the Commission would draw this Resolution to the attention of any State that is not a Party to the Convention and whose nationals or vessels are present in the Convention Area.

Other Conservation Measures In Force

The Commission agreed that Conservation Measures 2/III (as amended by Conservation Measure 19/IX to delete the reference to *Champsocephalus gunnari*), 3/IV, 4/V, and 7/V and 18/IX should remain in force as they stand. Conservation Measures 20/IX to 28/IX inclusive expired at the end of the 1990/91 season.

Catch Reporting

Catches of *D. eleginoides*, including haul by haul data, should be reported to the Secretariat every five days, according to the system as described in Conservation Measure 36/X. Biological data, however, should be reported monthly according to the protocols set out in Conservation Measure 37/IX.

Catches of *E. carlsbergi*, should be reported to the Secretariat at the end of each calendar month, according to the system described in Conservation Measure 40/X. In addition, biological data should be reported every month in accordance with Conservation Measure 39/X.

Dated: December 20, 1991.

Raymond Arnaudo,

Chief, Division of Polar Affairs, Office of Oceans Affairs.

[FR Doc. 92-117 Filed 1-3-92; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aircraft Accessibility Federal Advisory Committee

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of establishment of federal advisory committee.

SUMMARY: This notice announces the establishment of an advisory committee to provide guidance to the Department of Transportation (DOT) concerning access to lavatories on narrow-body aircraft for persons with disabilities, including persons in wheelchairs.

Aircraft Accessibility Federal Advisory Committee Charter

I. Purpose

This charter establishes a federal advisory committee to provide guidance to the Department of Transportation

(DOT) concerning access to lavatories on narrow body aircraft for persons with disabilities including persons who use wheelchairs. It sets forth guidelines for operation of the committee in accordance with the Federal Advisory Committee Act 5 U.S.C. app. I (FACA), and the Department's regulations on Federal Advisory Committee, 49 CFR part 95.

II. Sponsor and Office Providing Support Services

The Office of the Assistant Secretary for Policy and International Affairs will sponsor the committee. The Office of Transportation Regulatory Affairs will provide support services.

III. Scope of Objectives

(a) The committee will advise the Secretary of DOT on issues necessary for further rulemaking to implement the Air Carrier Access Act of 1986. The committee will advise the Department on matters such as:

1. Whether it is feasible to design a toilet that can be fitted into narrow body aircraft that will accommodate persons with disabilities, including those who use wheelchairs;
2. For the various cabin configurations of different aircraft types under 200 seats, what physical layouts are possible to offer passengers at least visual privacy, and the ability to maneuver in the lavatories?
3. What physical layouts are possible which would provide disabled passengers full maneuvering room using an on-board chair inside the lavatory? What layouts would provide partial accessibility, (e.g. a privacy area curtain outside the lavatory)?
4. Which designs can be accomplished without the loss of revenue seats? Which design can be accomplished with only a minimal loss of revenue seats?
5. How would such arrangements impact on the passengers traffic within the cabin, flight attendant duties in galleys, and the opportunity for passengers to use other lavatories?
6. How might such arrangements impair safety?
7. In small planes, where can the aisle chairs be stored?
8. Down to what size airplanes and what types can such requirements reasonably be imposed?
9. Should the requirements for accessible lavatories be made a function of stage length (i.e. the length of the flight which the aircraft performs) instead of airplane size, and if so for what stage lengths should such requirements be improved?

The Department will use advice provided by the committee to develop a notice of proposed rulemaking and a final rule.

(b) The committee shall act solely in an advisory capacity to the Department and shall neither exercise any program management responsibility nor make decisions directly affecting the matters on which it provides advice.

IV. Duties

Consistent with the scope and objectives described in Section of this charter, the committee is authorized to:

(a) Review comments submitted to Docket No 46812 in response to the Supplemental Notice of proposed rulemaking published in the **Federal Register** on March 6, 1990.

(b) Provide a forum for discussion of issues that will be covered in the proposed and final rules.

(c) Respond to specific assignments made by the sponsor.

V. Membership

(a) The committee will consist of approximately 20 members appointed by the Assistant Secretary for Policy and International Affairs with the approval of the Secretary. Members will be representative of organizations that have an interest in gaining access to lavatories in narrow body aircraft and airline industry representatives.

(b) The membership will be balanced in terms of points of view represented.

VI. Chairperson(s)

The Chairperson(s) will be appointed by the Assistant Secretary for Policy and International Affairs.

VII. Meetings

(a) The Committee and any subcommittee will meet and terminate at the call of the designated federal official. Agenda will be reviewed and approved by the designated federal official.

(b) Each committee and subcommittee meeting will be open to the public. A notice of each meeting will be published in the **Federal Register** at least fifteen days in advance of the meeting. Shorter notice is permissible in cases of emergency, but the reason for the emergency must be reported in the notice.

(c) Detailed minutes of each meeting will be kept and their accuracy certified to by the committee chairperson. The minutes will include the time and place of the meetings, a record of the persons present, a complete summary of matters discussed and conclusions reached, if any, by the committee or any subcommittee.

VIII. Compensation for Non-Federal Members

Non-federal government members serve without compensation, but may be reimbursed for expenses.

IX. Estimated Annual Cost to the Government

Some cost to the government is anticipated. However, should cost be incurred, in no event will those costs exceed $50,000 and one quarter person years, which is the ceiling for this committee. No government staff positions are being allocated to the committee on a full-time basis.

X. Public Interest

The information and use of the committee is determined to be in the public interest in connection with the performance of duties imposed on the Department of Transportation by law.

XI. Effective Date

This charter is effective fifteen days after publication in the **Federal Register**, and terminates upon completion of the subject rulemaking or two years after this date, whichever occurs first, unless, before such time, it is extended in accordance with the FACA and other applicable requirements.

FOR FURTHER INFORMATION CONTACT: Donald R. Trilling, Director, Office of Transportation Regulatory Affairs, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Telephone (202) 336-4220; or Ira Laster, Jr., Senior Program Coordinator, Office of Transportation Regulatory Affairs, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Telephone (202) 366-4859.

Issued on December 27, 1991.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-145 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Acceptance of Noise Exposure Maps and Request for Review of Noise Compatibility Program for McClellan-Palomar Airport, Carlsbad, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the County of San Diego, California for the McClellan-

Palomar Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the McClellan-Palomar Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before June 17, 1992.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 20, 1991. The public comment period ends February 18, 1992.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Airport Planner, Federal Aviation Administration, Planning Section, AWP–611.3, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone (310) 297–1621. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the McClellan-Palomar Airport are in compliance with applicable requirements of Part 150, effective December 20, 1991. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 17, 1992. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional non-compatible uses.

The County of San Diego, California, submitted to the FAA on October 12, 1990, noise exposure maps, descriptions and other documentation which were produced during the preparation of the McClellan-Palomar Airport Noise Compatibility Study dated August 1990. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the County of San Diego. The specific maps under consideration are Exhibits Q and R in the submission. The FAA has determined that these maps for McClellan-Palomar Airport are in compliance with applicable requirements. This determination is effective on December 20, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the McClellan-Palomar Airport, on December 29, 1991. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 18, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP–600, 15000 Aviation Blvd., room 3E24, Hawthorne, CA 90261.

County of San Diego, Department of Public Works, 5555 Overland Avenue, San Diego, CA 92123.

McClellan-Palomar Airport, 2198 Palomar Airport Road, Carlsbad, CA 92008.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on December 20, 1991.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 92-148 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 91-51; Notice 2; Docket No. 91-60; Notice 2]

The Clarity Group, Inc.; Solectria Corp.; Extension of Time To Comment on Petition for Temporary Exemption From Several Federal Motor Vehicle Safety Standards

On December 4, 1991, the National Highway Traffic Safety Administration (NHTSA), published notice of receipt of a petition from The Clarity Group, Inc., dba Electric Transportation Applications, for temporary exemption from several Federal motor vehicle safety standards (56 FR 63546). The comment closing date on the notice is January 3, 1992. Ford Motor Company has petitioned for an extension of time in which to comment. December 20, 1991, is the last working day for Ford, prior to its Christmas and New Year's recess, and it does not return to work until January 2, 1992. Because it has an active electric vehicle program, it believes it can provide information helpful to NHTSA in its deliberations on the merits of the petition. Ford requested a 30-day extension.

On December 17, 1991, the agency published a similar notice with respect to a petition by Solectria Corporation for a temporary exemption from several Federal motor vehicle safety standards (56 FR 65531). The comment due date on this notice is January 16, 1992. Because part of the comment period for this notice also falls during holiday recesses, the agency believes that it is in the public interest to extend the comment date on this notice as well.

Accordingly, in consideration of the foregoing, the due dates for comments on Docket 91-51 and Docket 91-60 are hereby extended to January 31, 1992.

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8.

Issued: December 30, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-118 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 91-61; Notice 1]

Solar Electric Engineering, Receipt of Petition for Temporary Exemption From Five Federal Motor Vehicle Safety Standards

Solar Electric Engineering of Santa Rosa, California, has applied for a temporary exemption from five Federal motor vehicle safety standards for passenger cars and trucks that it converts to electric power. The basis of the petition is that an exemption will facilitate the development and field evaluation of low-emission motor vehicles.

Notice of receipt of the petition is published in accordance with agency regulations on the subject (49 CFR part 555), and does not represent any judgment of the agency on the merits of the petition.

Petitioner intends to convert 1992 model Ford Escort passenger cars, and Chevrolet S10 pickup trucks to electric power, as well as certain other unspecified passenger cars certified as conforming to the Federal motor vehicle safety standards. The Fords will be marketed under the name "Electron-One", and the Chevrolets under the name "Electron-Two." The basis of the petition is that a temporary exemption would facilitate the development and field evaluation of a low-emission motor vehicle, as provided by 49 CFR 555.6(c).

The vehicles to be converted have been certified by their original manufacturers to conform to all applicable Federal motor vehicle safety standards. However, petitioner has determined that the vehicles may not conform with all or part of five Federal motor vehicle safety standards after their modification. The standards and sections for which exemptions are requested are discussed more fully below.

1. Standard No. 103, Windshield Defrosting and Defogging Systems.
2. Standard No. 105, Hydraulic Brake Systems.

Petitioner states that the vehicles originally conform to these standards, but it is unsure whether performance requirements are met after conversion.

3. Standard No. 201, Occupant Crash Protection.
4. Standard No. 204, Steering Control Rearward Displacement.
5. Standard No. 208, Occupant Crash Protection.

None of the impact protection materials of vehicles certified to comply with Standard No. 201 are removed as part of the conversion, and the vehicle's original restraint system conforming to Standard No. 208 remains in place. However, the petitioner is unsure whether performance differs "since the weight and mass has (sic) been altered."

According to the petitioner, an exemption would facilitate the development and field evaluation of a low-emission motor vehicle by enabling the petitioner to produce and market its vehicles. Such exemption would not unduly degrade the safety of the vehicle because of its intended use in low speed urban areas.

Further, argues the petitioner, granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act because the vehicles would "reduce air pollution at street level and lessen the dependence of the United States on importation of petroleum."

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 3, 1992.

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50, and 501.8.

Issued on December 30, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-119 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 30, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance

Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0205.
Form Number: IRS Form 5452.
Type of Review: Revision.
Title: Corporate Report of Nondividend Distributions.
Description: Form 5452 is used by corporations to report their nontaxable distributions as requested by Internal Revenue Code (IRC) section 6042(d)(2). The information is used by IRS to verify that the distributions are nontaxable as claimed.
Respondents: Farms, Businesses or other for-profit, small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 1,700.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—24 hours, 9 minutes.
Learning about the form or the law—1 hour, 20 minutes.
Preparing the form—3 hours, 39 minutes.
Copying, assembling, and sending the form to IRS—32 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 50,439 hours.
OMB Number: 1545–1099.
Form Number: IRS Form 8811.
Type of Review: Extensive.
Title: Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.
Description: Form 8811 will be used to collect the name, address, and phone number of representative of a Real Estate Mortgage Investment Conduit (REMIC) who can provide brokers with the correct income amounts that the broker's clients must report on their income tax returns. It is estimated that there are some 1,000 REMICs currently in existence.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hours, 38 minutes.
Learning about the form or the law—24 minutes.
Preparing, copying, assembling, and sending the form to the IRS—27 minutes.
Frequency of Response: Other (Taxpayer must only file once for each obligation issued.)
Estimate Total Reporting/Recordkeeping Burden: 3,490 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–113 Filed 1–3–92; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

December 30, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments Regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0059.
Form Number: ATF F 5120.29.
Type of Review: Extension.
Title: Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.
Description: ATF F 5120.29 is completed by proprietors of bonded wineries who intend to produce wine, to ensure that the formulas and processes used in the production of wine are in accordance with the regulations of the Federal Alcohol Administration Act and the Internal Revenue Code.
Respondents: Businesses or other for-profit, small businesses or organizations.
Estimated Number of Respondents: 600.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,200 hours.
OMB Number: 1512–0092.
Form Number: ATF F 5100.31 (1648/1649/1650).
Type of Review: Extension.
Title: Application for Certification/Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act.
Description: The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry and submitted to Treasury as an application to label their products. Treasury oversees label application to prevent consumer deception and to deter falsification of unfair advertising practices on alcoholic beverages.
Respondents: Businesses or other profit, Small businesses or organizations.
Estimated Number of Respondents: 6,060.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 27,300 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–153 Filed 1–3–92; 8:45 am]
BILLING CODE 4810-31-M

Fiscal Service

Renegotiation Board Interest Rate Prompt Payment Interest Rate Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (Pub. L. 92–41). For example, the Contracts Disputes Act of 1978 (Pub. L. 95–563) and the Prompt Payment Act (Pub. L. 97–177) are required to calculate interest due on claims " * * * at a rate established by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97) for the Renegotiation Board."

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest

applicable for the purpose of said sections, for the period beginning January 1, 1992 and ending on June 30, 1992, is 6⅞% per centum per annum.

Dated: December 18, 1991.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-154 Filed 1-3-1992; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 57. No. 3
Monday, January 6, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 7, 1992, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g. § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee..

* * * * *

DATE AND TIME: Thursday, January 9, 1992, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1991-36: Mr. John E. Impert, Assistant General Counsel of The Boeing Company

* * * * *

Technical and Conforming Amendments to Honoraria Regulations
Administrative Matters

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Delores Harris,
Administrative Assistant.

[FR Doc. 92-283 Filed 1-2-92; 2:44 pm]

BILLING CODE 6715-01-M

federal register

Monday
January 6, 1992

Part II

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 455

Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions; Notice of Proposed Rulemaking and Public Hearings

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 455

[Docket No. CE-RM-91-130]

Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions

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

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: Today the Department of Energy (DOE) is proposing revisions to the regulations for its Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions, also known as the Institutional Conservation Program (program, Institutional Conservation Program, or ICP) and is requesting public comment. The program provides grants to institutions to fund detailed energy audits, called technical assistance programs (TAs), and energy conservation measures (ECMs). The purpose of the proposed revisions is to provide States and institutional grantees more specific guidance in some areas of program operation and more flexibility in other areas. The revisions are also intended to improve DOE's ability to assist States, institutions, and other interested parties in improving energy efficiency, reducing energy costs, and leveraging available resources. In a number of cases, the revisions reflect changes to the program made by the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101-440).

DATES: Written comments (ten copies) in response to this Notice must be received by DOE on or before February 14, 1992; to ensure their consideration. Three public hearings are scheduled to be held: in Washington, DC on February 4, in Dallas, TX on January 28, and in San Francisco, on January 30. Requests to speak at the hearings must be received no later than February 3, for Washington, January 27, for Dallas, and January 27, for San Francisco.

ADDRESSES: All written comments (ten copies), as well as requests to speak at the public hearings, are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, CE-90, Hearings and Dockets, Notice of Proposed Rulemaking for Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586-3012. FAX comments will not be accepted.

The public hearings will be held at the following locations:

January 28, 1992—1:30 p.m.

Earle Cabel Federal Building, 1100 Commerce Street, room 1B16A (1st Floor), Dallas, Texas.

January 30, 1992—8:30 a.m.

U.S. Appraisers Building, 630 Sansome Street (btwn Washington & Jackson), room 1415 (14th Floor), San Francisco, CA.

February 4, 1992—1 p.m.

Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., room TBD, Washington, DC.

Each person to be heard is requested to bring ten copies of his/her Statement to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements may be made with the Office of Hearings and Dockets in advance by so indicating in the letter or phone request to make an oral presentation.

Transcripts of the hearings, as well as the entire rulemaking record, will be available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the following address: U.S. Department of Energy, Freedom of Information Office Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-6020. Any person may purchase a copy of the transcript from the reporter.

For more information concerning public participation in this rulemaking proceeding, see section X, "Opportunity for Public Comment," of this notice.

FOR FURTHER INFORMATION CONTACT: Thomas P. Stapp, U.S. Department of Energy, Institutional Conservation Program, Conservation and Renewable Energy, CE-531, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-2096.

Neal J. Strauss or Vivian Lewis, U.S. Department of Energy, Office of General Counsel, Conservation and Regulations, GC-41, 6B-256, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Introduction and Description of the Program.
II. Proposed Rule Changes.
III.-VIII. Environmental, Regulatory Impact, Small Entity Impact, Paperwork Reduction Act, and Other Reviews.
IX. Catalog of Federal Domestic Assistance.
X. Opportunity for Public Comment.

I. Introduction and Description of the Program

The Department of Energy (DOE or Department) is proposing to amend the program regulations for the Institutional Conservation Program, 10 CFR part 455, authorized by title III of the Energy Policy and Conservation Act, as amended, (the Act) 42 U.S.C. 6371 *et seq.* The program is subject to the general DOE Assistance Regulations at 10 CFR part 600 which is cross referenced in 10 CFR part 455 and sometimes discussed in this preamble.

The Act established a primary goal for the program of reducing energy use and costs in institutional buildings. To accomplish this goal, it authorized DOE to establish cost-shared energy conservation grant programs to fund TAs in public and private non-profit schools, hospitals, and buildings owned by units of local government and public care institutions and to fund the purchase and installation of ECMs in schools and hospitals.

The TAs are used to identify changes in maintenance and operating procedures and new equipment or materials that could conserve energy in eligible buildings. Implementation of the maintenance and operating procedures and installations of the new ECMs contribute to energy conservation in the building where they are used.

The purpose of today's action is to improve the operation of the Institutional Conservation Program. The Department is taking these actions based on its experience in administering the program since fiscal year 1979, questions raised and suggestions made by participants in the program, and amendments to the Act by the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101-440) (1990 legislation). Other areas of program administration require revision because the program has evolved. DOE is proposing to rearrange a number of the subparts to the rule and to add some new subparts and new sections, to provide a more logical sequence and to make the rule easier to use. DOE is also making a number of minor technical or grammatical corrections.

DOE is also seeking to facilitate the leveraging of ICP funds by encouraging States and institutions to identify additional sources of funding for energy efficiency improvements and to obtain

funding from those sources where feasible. Since ICP funding is limited, it is important that States and institutions utilize non-grant funding sources whenever possible. Finally, DOE believes that improved and more flexible regulations will have a positive influence on energy efficiency efforts.

Over the history of the program, DOE has issued numerous policy guidance memoranda relating to various areas of program administration and implementation. These guidance memoranda will be reviewed and, as appropriate, edited or canceled to properly reflect the final rule.

II. Proposed Rule Changes

The following discussion indicates the changes DOE is proposing and the reasons for the changes. It is important to note that a number of the changes will require revisions to State Plans. DOE invites comments regarding these changes and other aspects of the program.

The principal revisions being proposed in this action are: Reorganizing the rule in more logical order and adding new sections and headings for clarity; redefining "building" to cover groups of structures centrally metered and served by a central utility plant; changing the building eligibility date to May 1, 1989; simplifying the definition of "energy audit" and offering States the option of doing simpler energy audits in the future; allowing demand-shifting ECMs if they don't use more energy than was used before their installation; adding definitions and other regulatory provisions for optional new grants to States for technical assistance, program assistance, and marketing; deleting the exclusion of educational agency administration buildings from eligibility; providing for various new or changed requirements that States must address in their State Plans or have the option to address; incorporating the DOE deobligation/reobligation policy for various types of situations into the rule; deleting the requirement that TAs be long-term planning documents and allowing States to limit the range and types of ECMs to be considered in TAs for particular types of buildings; allowing States to select either simple payback or life-cycle costing as their cost-effectiveness test for ECMs in the TAs done in the States, and adding regulatory provisions for States that want to use life-cycle costing citing Federal Energy Management Program (FEMP)-developed documents.

Further revisions proposed in this action are: Extending the allowable payback range for ECMs to 15 years from 10 years in States where life-cycle costing has been selected as the cost-effectiveness test (the lower end of the allowable range remains 2 years); dropping the former calculations for coal and renewable energy conversions and requiring that all ECMs (except those to shift demand) be evaluated based on the value of the energy saved; revising hardship criteria to concentrate only on financial need; raising the State administrative grant maximum base amount to $50,000 and eliminating the matching requirement for these grants; providing for administrative grants from appropriated funds where States fund ECMs from non-Federal sources; requiring a State to offer regular ICP grants to religious institutions where such institutions would be ineligible for non-Federal ECM funding due to State constitutional prohibitions on providing State aid to religious institutions; providing for allowance of liens where the matching contribution is borrowed, and requiring that DOE be notified if a lender sues to repossess the equipment; providing States the option of allowing applications for credit toward the grantee's share of the cost of ECMs and limiting credit to TAs and ECMs done within 3 years of grant application; allowing States the option of permitting applications for ECMs that were funded in previous cycles but never done; providing for a sample energy use report, using a statistically valid sampling technique, to replace the current requirement that all grantees file such reports; and allowing rebates to be used for the grantees' matching contribution.

List of Subparts and Sections

In order to improve the organization and comprehensibility of the program regulations, DOE proposes to rearrange the subparts. A list of the new proposed subparts and the corresponding old existing subparts is as follows:

Proposed new subpart	Existing subpart
Subpart A—General Provisions.	Subpart A—General Provisions.
Subpart B—State Plan Development and Approval.	Subpart H—State Plan Development and Approval.
Subpart C—Allocation of Appropriations Among the States.	Subpart I—Allocation of Appropriations Among the States.
Subpart D—Preliminary Energy Audit and Energy Audit Grant Procedures.	Subpart B—Preliminary Energy Audit and Energy Audit Grant Procedures.
Subpart E—Technical Assistance Programs for Schools, Hospitals, Units of Local Government, and Public Care Institutions.	Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government and Public Care Institutions.
Subpart F—Energy Conservation Measures for Schools and Hospitals.	Subpart D—Energy Conservation Measures for Schools and Hospitals
Subpart G—State Administrative Expenses.	Not a separate subpart.
Subpart H—State Grants for Technical Assistance, Program Assistance, and Marketing.	Not in existing rule.
Subpart I—Cost Sharing...	Not a separate subpart.
Subpart J—Applicant Responsibilities—Grants to Institutions.	Subpart E—Applicant Responsibilities.
Subpart K—Applicant Responsibilities—Grants to States.	Not a separate subpart.
Subpart L—State Responsibilities.	Subpart F—State Responsibilities.
Subpart M—Grant Awards.	Subpart G—Grant Awards.
Subpart N—Administrative Review.	Part of Appeals Process Rulemaking.

As appropriate, new sections and revised section headings have been added to many of the subparts.

Section 455.2 Definitions

DOE proposes to revise the definition of "building" to change the eligibility date to May 1, 1989, and to permit a group of structural units served by a central utility plant and centrally metered to be considered a "building." The 1990 legislation changed the building date, and DOE believes a broader definition of "building" will add flexibility where a group of structural units has a single energy-using plant providng heating and/or cooling and is on a central meter. However, it is important to note that only the eligible portions of buildings may be the subjects of ICP-funded conservation improvements. In cases where part of a building is an eligible institution and part is ineligible (a building housing both a school and a church, for instance), the ineligible part may not be the subject of ICP-funded conservation improvements.

DOE proposes to revise the definition of "complex" to delete a group of buildings served by a central utlity plant which would now be covered under the revised definition of building.

DOE proposes to revise the definition of "coordinating agency" to clarify that a State may serve in this role consistent with State laws and regulations.

DOE proposes to revise the definition of "energy audit" (EA) to delete the reference to former § 455.19 (which DOE is proposing to drop from the rule, as discussed later) and to add wording which reflects the definition in the Act. Energy audits are no longer funded by DOE, and, as discussed under new § 455.20, DOE is now proposing to allow each State to decide what type of energy audit to require as the basis for TA grant applications with the new definition in this section serving as the minimum requirement for State-designed EAs.

DOE proposes to revise the definition of "energy conservation measure" (ECM) to reflect statutory amendments. A new subsection (d) would be added to cover measures designed to shift energy usage to off-peak hours if they save energy costs and do not increase energy use. These cost-saving (but not necessarily energy-saving) systems are now allowable because of the 1990 legislation. (A separate definition is also being added under "load management system.") Consistent with applicable U.S. House of Representatives report language, DOE does not interpret the revised definition to cover fuel switching. House Report No. 101–646, 101st Congress, 2d Session 15 (1990), reprinted in 1990 U.S. Code Congressional & Administrative News 1656.

DOE proposes to revise new subsection (j) (old subsection (i)) under the definition of "energy conservation measure" to add, as an eligible measure, replacement or modification of exterior light fixtures that are physically attached or connected to an eligible building. This change would provide for institutions to make exterior, as well as interior, improvements to light fixtures as long as those fixtures meet the specified criteria.

DOE is proposing to delete the definition of "energy use evaluation" (EUE) because DOE is also proposing to delete old § 455.20 (which described EUE requirements). As already discussed, States will be able to design their own requirements for an EA, consistent with the statutory definition of "energy audit," under the changes proposed in this rulemaking.

DOE proposes to add a new definition for "load management system" to provide for this type of equipment, newly allowable due to the 1990 legislation. This is the only type of ECM eligible for funding under ICP that is not required to save energy. However, this type of ECM is not allowable in cases where it causes more energy to be used than was used before its installation.

DOE proposes to add a definition for "marketing" to provide for this new type of State grant activity made allowable, under certain circumstances, by the 1990 legislation. The proposed definition is consistent with the applicable language in the U.S. House of Representatives report previously cited.

DOE proposes to delete the definition of "Operations Office Manager" to reflect the realignment of the DOE field offices. A definition of "support office director" is being added as part of this change.

DOE proposes to revise the definition of "preliminary energy audit" (PEA) to reflect the definition in the Act. As with energy audits, DOE no longer funds PEAs and thus is simplifying the definition to describe a minimum standard for PEAs.

DOE proposes to add a definition for "program assistance" to provide for this new type of State grant activity made allowable, under certain circumstances, by the 1990 legislation. (See section 6 of Pub. L. 101–440).

DOE proposes to revise the definition of "school facilities" by adding administrative facilities (newly allowable due to the 1990 legislation).

New Subpart B—State Plan Development and Approval

DOE proposes to make old subpart H new subpart B (old subpart B becomes new subpart D), with new section numbers starting with § 455.20. From old subpart H, old § 455.92, which provided for development by DOE of State Plans for States that did not have their own approved by February 7, 1981, is being deleted because it is no longer needed. All States had approved plans by that date.

New Section 455.20 Contents of State Plan

DOE proposes a series of revisions to new § 455.20, clarifying some paragraphs and specifying areas where the States may need to provide new or revised entries in their State Plans. First, DOE proposes revising the introductory sentence of the section to add wording referring to the new option for States to apply for grants to provide technical assistance, program assistance, and marketing.

DOE proposes to add a new paragraph (c) requiring States to set forth their procedures for notifying their eligible institutions (for each cycle that allocations are provided by DOE) of the availability of funding under this part. Since States must already have such procedures established, this change simply requires that the procedures be included in the State Plan.

DOE then proposes to redesignate former paragraph (c) as new paragraph (d) and then to delete the former paragraph (d) entirely. That paragraph required States to include results from preliminary energy audits. Since that part of the program is now completed and has been reported on in previous State Plans, DOE believes it is now appropriate to delete the requirement that the information continue to be included in future State Plans.

DOE then proposes adding new paragraph (j) requiring a State to describe its programs to provide technical assistance, program assistance, or marketing if the State elects and is eligible to establish one or more such programs. This change results from the 1990 legislation and is more fully discussed under subparts H and K.

DOE then proposes redesignating existing paragraph (l) as new paragraph (k) and revising this paragraph to require States to describe their requirements for the energy audit that is to be used as the basis for a TA grant application. DOE is proposing to delete former §§ 455.18, 455.19, and 455.20 which covered the requirements for PEAs, EAs, and EUEs. However, States can include, in their EA requirements, any of the elements from those sections that are considered necessary for an effective EA.

Former paragraph (j) would then become new paragraph (l) and would be revised to simplify the requirements for assuring the implementation of maintenance and operating procedures or for an adequate explanation for not implementing them. Former paragraph (k) would then become new paragraph (m) and would be revised to require States to more specifically evaluate grant applications to assure that grant funds are not supplanting other available sources of funding. With limited Federal funds available for ICP, it is important for States and institutions to investigate and consider other sources of funding before seeking ICP grants. Former paragraph (m) would be deleted because new paragraph (k) provides for States to set requirements for EAs. Paragraph (n) would then be revised to clarify that the TAs referred to are the TAs that are used as the basis for ECM grant applications.

A new paragraph (o) is added to require a State to specify its policies regarding selection of the ECMs to be studied in a TA and its requirements for TAs for different types of buildings if it elects to impose requirements beyond those in the rule. States may limit the number and types of ECMs to be studied in the TAs, as appropriate for the particular types of buildings involved, but they need to be specific about these

limitations in their State Plans. At a minimum, State-designed TAs must include the information required under §§ 455.62 and 455.63. Old paragraph (o) would then be redesignated paragraph (p), and a provision would be added for a State to specify hospital or school certification requirements unique to the State. A new paragraph (q) would then be added to provide for a State to specify the circumstances under which it requires an updated TA. Old paragraph (p) would then be redesignated as new paragraph (r). A new paragraph (s) would be added to provide for a State to specify whether, and under what circumstances, it will consider allowing reapplication for ECMs funded in earlier cycles but not implemented.

Old paragraphs (q) and (r) are redesignated as new paragraphs (t) and (u), respectively. DOE proposes to require, in new paragraph (u), that States use 3,413 as the factor in the conversion of kilowatt hours to Btu's to ensure consistency among all States. This factor represents consumption at the consumer's end. (Formerly, DOE policy allowed States the choice of using 3,413 or 11,600, which represents consumption at the producer's end). This change need not affect the rankings of projects that might benefit from the use of the higher factor (for instance, those involving a change in the use of electricity), because States can compensate for using the lower factor by adding to the weight of this type of change pursuant to paragraph (e) of this section and § 455.131(c). DOE also proposes to add to new paragraph (u) a provision for States to select either simple payback or life cycle costing as their cost effectiveness testing approach for technical assistance programs. A new paragraph (v) would then be added to provide for a State to describe its role as coordinating agency if it plans to serve in that role. A State serving in this role may receive a grant from DOE for TAs and/or ECMs and may, in turn, provide the assistance to its schools and hospitals. This is not a newly allowable role for States, but only two States have chosen to apply to run their programs this way. Other States may wish to consider this approach.

New paragraph (w) would then be added to provide for a State to specify the circumstances under which it will consider applications for credit for costs incurred on projects.

New Section 455.21 Submission and Approval of State Plans and State Plan Amendments

DOE proposes adding new paragraph (d) to this section to provide for amendments submitted by the State because of changes the State wishes to make. DOE also proposes to revise paragraph (e) (formerly paragraph (d)) to provide for a 60-day review period for State plan amendments by DOE. The existing rule does not specify a limit for DOE's review of amendments.

New Subpart C—Allocation of Appropriations Among the States

DOE proposes to redesignate old subpart I as new subpart C (old subpart C becomes new subpart E) with new section numbers starting with § 455.30.

New Section 455.30 Allocation of Funds

DOE proposes to revise this section as follows: Adding to paragraph (a) a reference to the new grants to States for technical assistance, program assistance, and marketing; adding new subparagraphs (b)(2) and (b)(3), providing for States that elect and are eligible to use their appropriated funds for TAs, program assistance, or marketing, and for State administrative expense grants, respectively; and then redesignating old subparagraph (b)(2) as (b)(4). Allowing States to use their allocations for TAs, program assistance, and marketing is a change resulting from the 1990 legislation; DOE is particularly interested in any suggestions relating to the implementation of this new provision.

New Section 455.32 Reallocation of Funds

DOE proposes to delete paragraph (b), which relates to the allocation of funding for States that did not have State Plans approved by February 7, 1981. Since all States had approved plans as of that date, this paragraph is now moot. Former paragraph (c) is then redesignated paragraph (b).

DOE then proposes to add new paragraphs (c), (d), (e), and (f) to specify when various ICP grant funds will be deobligated by DOE and reallocated among all the States (as required by the Act) and to provide (in paragraph (d)) for the reobligation within a State of declined grant funds under certain circumstances. With the exception of paragraph (f) which covers the new State grants for TAs, program assistance, and marketing, these paragraphs reiterate existing DOE policy.

New Subpart D—Preliminary Energy Audit and Energy Audit Grant Procedures

DOE proposes to redesignate old subpart B as new subpart D in the new arrangement of the rule (old subpart D becomes new subpart F). New section numbers in this subpart would be §§ 455.40–455.49. Old §§ 455.18, 455.19, and 455.20 from old subpart D are proposed for deletion as discussed earlier. Those sections cover detailed requirements for PEAs, EAs, and EUEs.

The effect of these deletions would leave the general statutory definitions of PEA and EA in § 455.2 for use in connection with regulatory provisions other than subpart D. For years, Congress has not appropriated funds for subpart D grants. If Congress were to provide appropriations for subpart D grants, DOE would reissue rules prescribing detailed content requirements after seeking public comment. (New §§ 455.48 and 455.49 are indicated in the regulatory table of contents as reserved for such rules.) DOE is considering removal and reservation of all of subpart D because there is very little likelihood that funds will be made available in the foreseeable future, and the content of subpart D clutters part 455 with useless and potentially confusing details. DOE invites public comment on the desirability of removal and reservation of subpart D in the final rule. In the absence of persuasive adverse comment, DOE intends to take such action.

New Section 455.43 Allocation of Funds for Preliminary Energy Audits and Energy Audits

DOE proposes revising this section so that the information to be used in the formula corresponds to that in the formulas specified in § 455.31. While PEA and EA grants are not currently being funded, DOE feels it is appropriate at this time to make this correction. The existing formula in old § 455.13 uses population data from the 1976 census estimates and heating and cooling degree days from the period 1941–1970. The revision provides for using the most recent data available which are consistent with the formula input for the allocations in § 455.31.

New Section 455.46 Use of Funds

DOE proposes to delete from the program regulations the specifics regarding the dollar threshold triggering a requirement for DOE prior approval of equipment purchases. The existing $500.00 threshold is out of date, and the current policies are set forth in the DOE Financial Assistance Regulations at 10 CFR 600.119 or 600.436.

New Subpart E—Technical Assistance Programs for Schools, Hospitals, Units of Local Government and Public Care Institutions

DOE proposes to redesignate old subpart C as new subpart E (with old subpart E being divided between new subparts I and J) with new section numbers starting with § 455.60.

New Section 455.61 Eligibility

DOE proposes to revise paragraph (a) to delete the exclusion of administrative buildings used by local education agencies. This change results from the 1990 legislation.

DOE also proposes to revise paragraph (c) of this section to conform to new § 455.20(k) which allows States to establish requirements for EAs, consistent with the definition of "energy audit" in the Act, to be used as the substantiation for a TA or ECM grant application. Paragraph (d) would be similarly revised.

New Section 455.62 Contents of a Technical Assistance Program

DOE proposes to revise this section to provide for the new State option of designing TAs to suit various building types. For purposes of a TA to be used as the basis for a later ECM grant application, a State must specify the extent to which various types of eligible buildings in the State are to be analyzed and the range of ECMs which must be considered. The basic TA content requirements are being retained in the rule, but each State will have the flexibility of specifying the extent to which potential ECMs must be evaluated and will be able to design one or more TA formats for its eligible buildings. This would mean that a State could set the same TA requirements for all its eligible buildings, or it could specify different requirements for different types of buildings. For example, a State might want to specify simpler TA requirements (meaning that fewer ECMs would have to be evaluated) for institutions with buildings that are relatively small in size, or for types of institutions that have relatively few ECM opportunities, or where the potential ECMs are relatively low-cost items. The goal here is to allow States to design TAs so that the cost and effort in doing the TA is in reasonable porportion to the cost of the ECMs that are likely to be recommended in the TA.

This revision to new § 455.62 is being proposed in response to many comments DOE has received over the years that the present TA requirements of the rule are too inflexible and often lead to costly and cumbersome TAs that may not serve a useful purpose to the institution. Apparently, some TAs are used only to substantiate a subsequent ECM grant application; a State may wish to recognize this reality by reducing its TA requirements for some or all of its institutions. Whatever approach the State chooses must be described in the State Plan and must be reasonable. (E.g., it would not be reasonable to include only one ECM in a TA.) States should ensure that, in cases where simpler TAs are permitted, allowable costs for such TAs are reduced accordingly. The individual revisions designed to permit State flexibility in TA design and oversight, together with basic requirements DOE is retaining in the rule, are discussed below.

DOE proposes to revise paragraph (a) of this section to explicitly require an on-site analysis of each building where a TA is performed. While it has always been understood that TAs involve an on-site analysis, it is DOE's intention that a TA could not, for example, be based entirely on a computer model of a building. In fact, DOE encourages TA analysts to concentrate on providing clear information in their TAs, with complex computer-generated data kept to a minimum and used primarily to support the recommendations in the TA. Former subparagraph (a)(1) becomes new paragraph (b). Former subparagraph (a)(2), which requires that TAs also be designed as long-term planning documents, is being proposed for deletion as a mandatory requirement. However, States and institutions may take advantage of the opportunity to have a TA provide as much planning information as possible, since it may be the one chance to have such documentation provided on a cost-shared basis.

Former paragraph (b) is being revised and shortened to reflect the changes already discussed, and redesignated as paragraph (c). Paragraph (d) is being revised to delete the requirements relating to evaluating the accuracy of EA's in § 455.62(d)(1)(i) and to delete the former subparagraphs (d)(3) and (d)(4). A change is also being proposed for § 455.62(d)(3)(vii), which has been redrafted to cross reference new proposed § 455.63, discussed in detail below, which deals with testing the cost effectiveness of an energy conservation measure. DOE proposes deleting former subparagraphs (d)(5)(vii) (A) and (B), which cover calculations for payback where coal and renewable energy conversions are being evaluated, as further discussed under § 455.63. DOE also proposes replacing former subparagraph (d)(5)(vii) with new subparagraph (d)(3)(ix) which requires all TAs to include the simple payback calculations for each recommended ECM so that DOE has a consistent data element to compare ECMs across the country, regardless of which cost-effectiveness test a State adopts pursuant to § 455.63.

In addition, a new § 455.62(d)(5) is being added to require that TAs include documentation as to demand charges paid by the institution over the prior 12-month period in cases where demand charges are being included in current energy prices and/or when the TA is recommending an ECM that shifts energy usage to a period of lower demand and cost.

New Section 455.63 Cost-Effectiveness Testing

DOE proposes to authorize States to decide whether to continue testing for cost effectiveness and assigning rank order on the basis of simple payback period or to shift to life cycle cost analysis. DOE is also proposing to eliminate special calculations for fuel switching to coal or renewable energy because all energy conservation measures, except for those that shift demand to off-peak hours, should be evaluated and ranked on the basis of the same economic criteria. DOE considered proposing a requirement for applicants to select energy conservation measures on the basis of the rank order indicated by the applicable cost effectiveness test, but elected not to change this aspect of the program because applicants should be free to consider factors in addition to purely energy-related factors in deciding what measures, from among those qualified on the basis of the TA, should be covered by a grant application.

The simple payback test is a rough estimate of cost effectiveness. It is rough in part because future cost savings are not discounted to present value, and significant effects on non-energy cash flows (e.g., non-energy operating and maintenance costs) are not included. The omission of discounting with the simple payback approach becomes especially problematic as paybacks become longer. A related change (discussed more fully later under § 455.71) will permit ECM's with up to a 15-year payback to be eligible where States elect to utilize the life-cycle costing approach. (The existing rule limits the payback period to 10 years which will continue to be the limit where States use the simple payback approach.)

The shortcomings of the simple payback approach suggest that the funds available to carry out the program

could be used more productively with a better cost-effectiveness test. On the basis of the foregoing, DOE considered eliminating simple payback altogether or with a delayed effective date to give time for adjustment. DOE is not proposing to do so, because it prefers to defer to State judgment which may take unique factors into account. DOE invites comment on this choice.

The proposed rule incorporates by reference the life-cycle cost analysis procedures which were developed over the last 10 years for the Federal Energy Management Program. They have proved to be effective and well-accepted by the users.

The procedures involve consideration of the estimated significant effects of an energy conservation measure on relevant cash flows, including non-energy cash flows such as non-energy operation and maintenance expenses, replacement costs, and salvage values. They also provide for discounting future cash flows to present value and for escalating future energy costs according to the estimated rate of energy price increases above inflation over the long term. Both the discount rate and the energy cost escalation rate are revised annually by DOE. The operational details of applying the methodology, including tables of present worth factors, are described in the Life Cycle Cost Manual for the Federal Energy Management Program (NIST 85-3272), which is published and updated annually by the National Institute of Standards and Technology (NIST). NIST has prepared menu-driven software for computerized life-cycle cost analysis on a personal computer. The software is updated by NIST annually in light of changes in the discount and energy cost escalation rates. NIST also conducts seminars which provide valuable training on the use of the software.

Generally, the discount rate for the life cycle analysis procedures is based on an annual average of U.S. Treasury bonds over the preceding 12 months less inflation as estimated by the President's Council of Economic Advisers. The development of the method for annually revising the discount rate, as well as the general background of the procedures, is described at 55 FR 2590 (January 25, 1990) and 55 FR 48217 (November 20, 1990). The present rate is between 4 and 5 percent real, but some States may want to use a higher discount rate. The proposed rule would allow them to do so. The effect of a higher discount rate will be to make estimated future cost savings appear smaller in comparison to investment costs; fewer projects will qualify, and those that do will appear less cost-effective.

As indicated above, the life-cycle cost analysis procedures include energy cost escalation rates. The proposed rule would also allow States to dispense with those rates. The effect of dispensing with those rates will make the estimated energy cost savings appear relatively smaller with an impact similar to that of a higher discount rate.

DOE considered limiting the savings to be used, for ranking with the life-cycle cost approach, to energy cost savings or requiring that energy cost savings constitute a specified percent of the overall savings used in the analysis (possibly 50 percent). Some States may object to such a limitation because they think it is better economics to consider all estimated significant cost effects (and not just energy cost savings) resulting from a proposed ECM. DOE has decided not to include such limits in today's proposal but would be interested in hearing comments on this subject.

DOE also considered limiting the study period for a life-cycle cost analysis to the useful life of the ECM or the remaining building life, whichever is less. This limitation would preclude consideration of replacement costs, which ICP does not fund, and some States might object to such a limitation because they might wish to facilitate selection of ECM's from among cost effective ECM's on the basis of replacement cost savings. DOE has decided not to include such a limitation in this proposed rule but would be interested in comments as to the desirability of such a limitation.

In formulating today's proposal, DOE considered the greater computational complexity of life-cycle cost analysis. However, since the technical assistance programs are conducted by architectural and engineering firms, DOE does not believe such complexity to be a persuasive reason for retaining simple payback as the only test of cost-effectiveness. DOE also considered whether the requirement might boost the cost of a technical assistance program prohibitively. Given that the software is available at relatively small cost, it is hard to see how the requirement would involve a significant cost factor.

DOE is especially interested in comments on the new proposed § 455.63 and conforming changes elsewhere in the proposed rule.

New Subpart F—Energy Conservation Measures for Schools and Hospitals

DOE proposes to redesignate old subpart D as new subpart F with new section numbers starting with § 455.70.

New Section 455.70 Purpose

DOE proposes to revise this section to clarify the purpose of subpart F.

New Section 455.71 Eligibility

DOE proposes to revise paragraph (a) of this section (formerly § 455.51) to delete the exclusion of administrative buildings used by local education agencies. This change is mandated by the 1990 legislation.

DOE also proposes to add a new subparagraph (a)(4) to require the completion of an updated TA if the State requires such an update for the particular type of ECM application. This change is also reflected in new § 455.20, which covers State Plans. DOE believes each State should decide when TA updates are needed and should specify this in its State Plan. DOE proposes to redesignate old subparagraphs (a) (4), (5), and (6) as new subparagraphs (a) (5), (6), and (7) to allow for the addition of new subparagraph (a)(4).

DOE then proposes to add a new paragraph (b)(2) to provide for the use of savings-to-investment ratios instead of simple payback where States elect to require a life-cycle cost effectiveness test and then to make the allowable payback range 2–15 years for ECMs proposed in those States. This change in payback range is being made to permit the funding of longer payback ECMs in States where such ECMs would rank for funding, and where the State has elected to require the use of the more rigorous life-cycle costing approach. The payback range is not being proposed for extension in States where simple payback is still used as the cost effectiveness test because that approach causes unacceptable distortions in over 10-year payback calculations due to its failure to discount future cash flows to prevent value. While the lower payback ECMs still seem the most urgent ones for the majority of eligible institutions to undertake with ICP grants, DOE is now making it possible for institutions to consider longer payback ECMs if the State provides for this by adopting the life-cycle costing test for cost effectiveness.

DOE is also proposing to add a new paragraph (c) stating that leased equipment is not eligible for funding under ICP. This was formerly included as part of the definition of ECM in § 455.2. It refers to traditional leased equipment where title does not pass to the lessee at the conclusion of the lease. Long-term purchase agreements, where title automatically passes to the purchaser at the end of the agreement at no additional cost, would not be

considered leases for this purpose even if their names (for instance, "municipal lease") sound like traditional leases.

New Section 455.72 Scope of the Grant

DOE proposes revising the title of this section (formerly § 455.52) to better reflect its purpose and then proposes adding wording to the section to differentiate between the design costs included as part of a TA and those later included as part of the ECM. Provision is also made for ECMs designed to shift energy usage to periods of lower demand and cost.

New Subpart G—State Administrative Expenses

DOE proposes adding this subpart (§§ 455.80, 455.81, and 455.82) to describe grants for State administrative expenses, which formerly were funded activities not separately covered in the rule. With new State grant-funded activities permitted by the 1990 legislation (described in new subpart H), it appears best to describe each major category of grant in a separate subpart rather than add more types of grants to, for instance, the former section on grant application submittals. (DOE is also proposing to add a new subpart K to cover applicant responsibilities for the various types of grant-funded activities which may now be undertaken by eligible States.)

New Section 455.82 Scope of the Grant

DOE proposes to move to this new section former paragraph (c) of former § 455.83 (new § 455.143) regarding allowable costs for State administrative expense grants, and to delete $500 and replace it with a cross reference to 10 CFR 600.436 to reflect a change in the Government-wide Common Rule (codified for DOE at 10 CFR part 600) relating to limits for equipment and tangible personal property for State grantees and a requirement for DOE prior approval.

New Subpart H—State Grants for Technical Assistance, Program Assistance, and Marketing

DOE proposes adding this subpart (§§ 455.90, 455.91, and 455.92) to describe the unique eligibility requirements for three types of grant-funded activities the States will have the option of applying for, under specified conditions, due to the 1990 legislation. States may use these grants, made from appropriated funds and issued by DOE, for State-run technical assistance programs, and for program assistance and marketing activities as defined in § 455.2. To be eligible to apply for these grants, a State must provide to DOE a certification pursuant to § 455.122.

States that are eligible to apply for these grants may apply to use up to 100 percent of their allocations for technical assistance and program assistance, and up to 50 percent for marketing, or they may continue to apply for administrative expense grants up to the relevant limits and then apply to use their remaining allocations for these new activities. States are not required to use the maximum allowable percentage of their allocations for these purposes, however.

States that have State constitutional prohibitions against direct State assistance to religiously affiliated institutions must make reasonable provisions for such institutions to continue to be eligible to receive assistance under ICP, including assistance for TAs and energy conservation measures. Because such institutions are eligible for ECM assistance under the Act, States must make ECM funding available to them either from the Federal funds provided by DOE, or from the non-Federal funds assembled by the State. A State with State law prohibitions against direct assistance to religiously affiliated schools and hospitals should decide the percent of allocated appropriated funds for which it wishes to apply under subpart H in light of those State law prohibitions and its estimate of the needs of religiously affiliated institutions based at least on data about their recent participation in ICP.

This may mean that such States must reserve a portion of their allocation each fiscal year for grant applications that are processed by DOE under the regular ICP grant process, if there is no other way for States to provide assistance to these institutions. In cases where a State has such a constitutional prohibition, and where the non-Federal funds for ECMs would not be available to such institutions, the State must certify to DOE, pursuant to § 455.122, that it has provided access to regular DOE-funded grants to the affected religiously affiliated institutions.

Whatever percent of the State s allocation is to be used for State technical assistance, program assistance, and marketing, the total dollar amount cannot exceed 15 percent of the aggregate Federal and non-Federal funds legally obligated to eligible recipients in the State during the fiscal year for eligible activities under this part. Eligible activities include ECMs and administrative expenses in addition to the newly allowable State TA, program assistance, and marketing activities.

These new types of grants are also covered in other sections of the rule, including §§ 455.20, 455.121, 455.122, 455.123, 455.134, and 455.144. However, DOE wants to emphasize that, to be eligible for such grants, a State must have a program or programs to fund, from non-Federal sources, the implementation of energy conservation measures eligible under this part. If a State intends to use its allocation of DOE appropriated funds partially or entirely for program and technical assistance, and for marketing costs associated with leveraging of non-Federal funds, the State would have to provide sufficient information in its State Plan and financial assistance application to warrant the conclusion that at least 85 percent of the aggregate Federal and non-Federal funds used for eligible program activities will be legally obligated or committed to recipients for ECMs eligible under this part by the end of the fiscal year for which the allocated funds were provided.

Not more than 5 percent of the aggregate Federal and non-Federal funds legally obligated to eligible recipients for technical assistance, program assistance, marketing, and energy conservation measures during the fiscal year may be used for State administrative expenses. States may elect to use part of their allocated funds for administrative expenses, in addition to technical assistance, program assistance, and marketing. Alternatively, States may use all of their allocated funds for technical assistance, program assistance, and marketing and ask participating institutions to contribute to the administrative expenses. However, for purposes of qualifying to use the allocated funds for these State grant activities, not more than 5 percent of the aggregate funds used for eligible activities cited above may be used for State administrative expenses.

DOE believes that, with the State s new ability to obtain grants for program assistance and marketing in addition to administrative expenses, there should be no need for States to exceed 5 percent for the administrative expense portion of those program activities. DOE is also concerned that States not "charge" school and hospital recipients of the non-Federal funds disproportionate fees to participate in ICP. Therefore, DOE believes a 5 percent limit on administrative expenses, whether wholly from the State s allocation or wholly or partially from institutions, is reasonable.

The 1990 legislation provides that eligible States may administer a

"continuous and consecutive award procedure for providing program and technical assistance under this part * * *." DOE interprets this to mean that once an eligible State receives its grant for technical and/or program assistance, it may provide those funds to institutions throughout the fiscal year for which the allocation was provided. The State would be responsible for the disbursement of those funds on whatever schedule the State establishes. However, it is important to remember that such funds must be legally obligated for their intended purposes to eligible institutions by the close of the fiscal year In addition, if a State wants to apply for administrative expenses in excess of the $50,000 maximum base provided for under § 455.120(b), the 5 percent maximum may only be based on the total Federal and non-Federal funds used for eligible activities during the fiscal year before the administrative expense grant for an amount in excess of $50,000 is applied for by the State. That would mean that, to apply for an amount in excess of $50,000 by the application deadline in September of a fiscal year, a State would have to base its application on funds legally obligated or committed on or before August 31.

DOE wants to assure that States not use their allocations to fund TAs, program assistance, marketing, and administrative expenses unless they have well-established, functioning programs to fund ECMs from non-Federal sources of funding. The primary goal of ICP always has been, and continues to be, one of assisting eligible institutions to achieve energy savings and related cost savings. A State which provides the required certification is implying that it will use (legally obligate or commit) 85 percent of the funds available for its ICP activities for a fiscal year for ECMs and related program costs. If, at the end of the fiscal year, the State is unable to demonstrate that it has substantially done so, it must comply with any relevant requirements of 10 CFR part 600, relating to non compliance with terms and conditions of the award. In addition, depending upon the circumstances, DOE may reject a similar certification for the next year, or accept it only if the percent of allocated funds is reduced in light of past performance, or take other appropriate action.

A State must account for these funds on a fiscal year basis, must meet its obligation to obtain the non-Federal sources of funding, and must assure that such funding is legally obligated or committed to eligible recipients for its intended purposes, entirely within the same fiscal year for which it is using allocated funds for technical assistance, program assistance, marketing, and administrative expenses. The non-Federal funds must be used specifically for energy conservation measures for eligible institutions and may not, for example, include general obligation bonds or loan funds which are not specifically dedicated to financing ECMs.

A hypothetical example of several State options is shown below·

State allocation from DOE	$500,000
Anticipated non-Federal funds	3,000,000
Total available for eligible ICP activities	3,500,000

When appropriated funds are available for a cycle, a State could:

(1) Apply to DOE to use all of the funds for TAs, program assistance, and marketing (assuming the State had no intention of applying for an administrative expenses grant at any time in the cycle); or

(2) Apply to DOE for a $50,000 administrative expenses grant and a $450,000 grant for TAs, program assistance, and marketing (assuming the State had no intention of subsequently applying for the maximum administrative expenses grant, which would be 5 percent of the actual funds legally obligated for technical assistance, program assistance, marketing, and energy conservation measures during the cycle); or

(3) Apply to DOE for a $50,000 initial administrative expenses grant and for a grant for technical assistance, program assistance, and marketing that would be reduced by the potential remaining administrative expenses grant (5 percent of the actual funds legally obligated or committed for technical assistance, program assistance, marketing, and energy conservation measures during the cycle, less the $50,000 administrative expenses grant already provided).

To determine the potential maximum administrative expenses grant possible in this case, the $3,500,000 would be multiplied by .04762. (It is important to remember that the maximum administrative expenses grant is currently based on 5 percent of the schools and hospitals grants awarded in the State. It is not based on 5 percent of the allocation, and, in fact, works out to .04762 of the allocation. Consistent with this policy, with these new types of grants, it would be based on 5 percent of the actual assistance provided in the form of legal obligations or commitments for eligible activities to eligible recipients during the cycle.)

In this example, the maximum potential total administrative expenses grant would be $166,670, so the State could ask for a second-phase administrative expenses grant of $116,670 ($166,670 less $50,000), provided the State documents at the time of its second application that the full $3,000,000 in non-Federal funds had been legally obligated or committed to eligible schools and hospitals for eligible activities during the cycle. Therefore, if the State wanted to reserve a sufficient amount of its allocation to apply for the maximum administrative expenses grant at the end of the cycle, the State would have to limit its application for a grant for TAs, program assistance, and marketing to $333,330, which is $500,000 less the $166,670 maximum potential administrative expenses grant.

A State would have the option of varying the amounts from these examples, for instance, by not applying for the maximum administrative expenses grant, or for any administrative expenses grant, by leaving some of the allocation available for traditional DOE-funded TAs and/or ECMs, or by not funding one or more of the activities such as TAs, program assistance, or marketing. In addition to the limitation that the total amount of grants to a State cannot exceed that State's allocation, there are two other limitations: The administrative expenses grant cannot exceed 5 percent; and the technical assistance, program assistance, and marketing grant cannot exceed 15 percent of the aggregate Federal and non-Federal funding legally obligated or committed to eligible institutions for eligible ICP activities in the State during the fiscal year for which the allocation is provided by DOE.

New Subpart I—Cost-Sharing

DOE proposes to create this new subpart, which covers various aspects of ICP cost-sharing. This topic was not formerly addressed in a separate subpart in the rule.

New Section 455.101 Borrowing the Non-Federal Share/Title to Equipment

DOE proposes to add this new section, which is provided for by the 1990 legislation. Grantees that borrow their non-Federal matching shares may use the equipment purchased with those funds as collateral for the loan, and may obtain clear title to the equipment after the loan is repaid. Current DOE policy requires grantees to obtain clear title before grant close out. This change will mean that, where the matching share is

borrowed and there is a lien on the equipment, grants may be closed out when all other program requirements have been met, with clear title passing to the grantee later, when the grantee's financial obligations under the lien have been met. Grantees must obtain clear title at that time, without having to pay an additional amount to "buy" the equipment. Financing agreements, such as traditional leases, in which the borrower never obtains clear title or must "buy" the equipment at the end of the agreement, are not allowable under ICP.

To the extent feasible, DOE encourages grantees to limit liens on equipment to the equipment purchased with the borrowed funds, so that equipment purchased with the DOE-provided grant funds is not put at risk. In addition, grantees must submit to DOE a certification as specified under § 455.111(e) if they borrow their matching share and allow a lien to be placed on the equipment funded under the grant. It is important to note in addition that, with the single exception of the lien, all program regulations and requirements apply to grants in which the matching share is borrowed. Grantees are cautioned to make sure that any financing agreement or related equipment acquisition agreement is in compliance with all applicable rules and regulations.

New Section 455.102 Energy Conservation Measure Cost Share Credit

DOE proposes to add this new section, which is a revised version of old § 455.82(e). The changes being proposed here would: Allow States the option of deciding whether to permit applications for credit; limit credit for ECMs to those commenced within 3 years of the grant application; limit credit for TAs to those dated no more than 3 years before the ECM grant application; and allow credit for TA updates (if the State elects to permit credit applications) where the State has determined that an update is required, pursuant to § 455.20(q). DOE believes credit should be limited to TAs recently completed and to ECMs recently installed, and is therefore proposing the 3-year limit (the rule now permits TAs and ECMs begun as far back as 1978 to be used for credit). The State option of allowing credit for TA updates is new, and DOE would be interested in receiving comments on this idea.

New Section 455.103 Requirements for Applications for Credit

DOE proposes to add this new section, which was formerly contained in old § 455.82(e). This section has been revised to allow for the State option to permit credit applications.

New Section 455.104 Rebates From Utilities and Other Entities

DOE proposes to add this new section to clarify DOE requirements that apply when ICP grantees receive rebates for ECMs funded by ICP grants. DOE wants to encourage grantees to apply for rebates when they are available. Grantees may use rebates or similar monetary considerations to meet grant cost sharing requirements. Grantees are not required to deduct the amount of the rebate or monetary consideration from costs, nor will DOE consider such rebates as program income to be remitted to DOE when received by the grantee.

New Subpart J—Applicant Responsibilities—Grants to Institutions

DOE proposes to create this new subpart to cover aspects of the rule applying to institutional (as opposed to State) grant applications. The subpart includes new §§ 455.110, 455.111, 455.112, and 455.113, which were formerly covered in old §§ 455.60, 455.61, and 455.63.

New Section 455.110 Grant Application Submittals for Technical Assistance and Energy Conservation Measures

DOE proposes to revise subparagraph (b)(2) of new § 455.110 to allow for the submission of information to substantiate a TA grant application as required by the State in its State Plan. Under the revisions proposed in this rulemaking, it will be the responsibility of each State to specify the information it will require about the buildings for which TA grants are being applied.

DOE proposes three revisions to paragraph (c) of new § 455.110: Changing the requirement for building identification in subparagraph (c)(2) to delete the reference to PEA data in old § 455.18 (which DOE is proposing to drop from the rule) and replace it with a requirement that applications include descriptions adequate to establish building use, eligibility, and ownership; adding to subparagraph (c)(5) references to life cycle cost savings-to-investment ratios, to provide for this new State option (while retaining the requirement that all applications include the simple paybacks of each ECM, so DOE has consistent data on all of the ECMs funded over the life of the program); and adding a new subparagraph (c)(7) to allow for the inclusion of an update of the TA in a grant application if such an update is required by the State. DOE then proposes to redesignate old subparagraphs (c)(7) and (c)(8) as new subparagraphs (c)(8) and (c)(9), respectively, to allow for the addition of new subparagraph (c)(7).

New Section 455.111 Applicant Certifications for Technical Assistance and Energy Conservation Measure Grants to Institutions

DOE proposes to revise paragraph (c) of new § 455.111 by referring to the State-required EA information for TA grant applications, as discussed above. In addition, a new paragraph (e) is being added to cover certifications by grantees that have borrowed their non-Federal shares and have allowed liens to be placed on the ECMs funded under the grant. As discussed under § 455.101, this certification is designed to assure that DOE is notified should the grantee ever later be sued due to problems with the repayment of the borrowed funds. Since DOE retains an interest in equipment acquired with ICP grant funds, it is essential that DOE be notified if that equipment is at risk of repossession by a lender.

New Section 455.112 Davis-Bacon Wage Rate Requirement

DOE proposes to create this new section to cover the Davis-Bacon requirement formerly included in old § 455.61. The wording has been simplified and reformatted, but the requirement remains the same.

New Section 455.113 Grantee Records and Reports for Technical Assistance and Energy Conservation Measure Grants to Institutions

DOE proposes revising this section throughout to require that grantees send one copy of each required report to DOE and one copy to the State, instead of having two copies sent to the State, with the State then sending one of those copies to DOE. This change eliminates the need for States to serve as intermediaries on reports to DOE and should result in DOE receiving the reports more directly and quickly.

DOE proposes revising new § 455.113 by removing State grant requirements formerly in old § 455.63 and by adding, in subparagraph (b)(2)(ii), a requirement that final reports from grantees include the actual costs, as well as the final estimated simple payback periods, or the final estimated life cycle cost (depending upon the State requirement) based on actual costs for each ECM and for the entire project. The previous language only required the final estimated payback. Since the original grant application included only TA

estimated costs, the final report must include the actual costs. Otherwise there will be no record of how estimated costs compared to actual costs.

DOE proposes revising subparagraph (b)(2)(iii) of new § 455.113 by providing that statistically valid samples of each State s grantees submit energy use reports for three years after project completion and by requiring, to the extent feasible, that energy consumption data in those annual energy use reports be monthly usage data by fuel or energy type. Grantees are also encouraged to provide relevant information about changes in building usage, equipment, or structure. These energy use reports may serve as useful tools in assessing the effectiveness of ECMs, and a carefully designed sample should result in better reports. DOE plans to develop the sample design and provide it to the States before the FY 1993 cycle begins.

New Subpart K—Applicant Responsibilities—Grants to States

DOE proposes creating this new subpart to cover all types of grants to States under ICP. Some of these requirements were formerly covered in §§ 455.60, 455.62, and 455.63, and some are new due to the 1990 legislation. This subpart includes new §§ 455.120, 455.121, 455.122, and 455.123.

New Section 455.120 Grant Applications for State Administrative Expenses

DOE proposes to revise this section (formerly § 455.62) by changing $30,000 to $50,000 in paragraph (a). This would become the new maximum base amount for a grant for State administrative expenses. The maximum remains 5 percent of the schools and hospitals grants awarded, when that exceeds $50,000. The $30,000 maximum base grant was established in 1983 (48 FR 28071–73, June 20, 1983), and DOE believes that it is now appropriate to raise it. States have considerable administrative responsibilities under ICP and, over the years, have found that effective program administration is a labor-intensive activity. DOE believes that $50,000 now is a reasonable, maximum base amount for these grants. A State could apply for that amount any time after DOE announces the availability of the State allocations.

DOE is proposing to delete the rest of the sentence following $50,000. The next sentence is revised so that States which are entitled to receive more than $50,000 may apply for their remaining administrative expenses grants after they submit to DOE their TA and ECM grant applications from schools and hospitals. DOE is not proposing to raise the maximum administrative expenses grant, which remains 5 percent of the schools and hospitals grants awarded in the State during the program cycle.

DOE is proposing to add a new paragraph (b) to permit States that are eligible to use up to 100 percent of their allocations for technical assistance, program assistance, and marketing to apply for administrative expenses grants, again in two stages: First, for the $50,000 maximum base amount after the cycle is announced; later, for up to 5 percent (less the $50,000) of their total funds obligated to eligible recipients for energy conservation measures, technical assistance, program assistance, and marketing during the fiscal year It is important to note here that the total amount for which a State applies to cover administrative expenses, technical assistance, program assistance, and marketing, may not exceed its allocation for the fiscal year

DOE is then proposing to establish a new paragraph (c) in new § 455.120, using the last sentence of old paragraph (a) for this new paragraph (c). This allows States to use funds allocated for administrative expenses for ECM and TA grants. DOE then proposes to delete from subparagraph (d)(2) (formerly (b)(2)) the references to sources of non-Federal share for administrative expenses grants. DOE is proposing to delete the requirement for matching contributions for these grants.

New Section 455.121 Grant Applications for State Technical Assistance, Program Assistance, and Marketing Programs

DOE proposes to create this new section to cover the requirements for the new grants to States provided for in the 1990 legislation. These grants have already been discussed under new subpart H, but this section covers in detail the requirements States must meet in order to apply for them. The 1990 legislation permits States meeting specified conditions to apply for up to 100 percent of their allocations for State-run technical assistance or program assistance programs, and/or up to 50 percent of their allocations for marketing programs. These programs must be described in the State Plan, and must be administered in conjunction with a non-Federally funded State program that provides the remaining financing—primarily ECM funding, or funding for ECMs and TAs if a State elects to use appropriated funds only for program assistance and marketing. The application requirements are intended to demonstrate that the State has a viable, non-Federally funded ECM program, and that not more than 15 percent of the funds legally obligated or committed to eligible recipients for the overall program will be spent on technical assistance, program assistance, and marketing.

Among the important requirements under this section are that non-Federally funded ECMs must be eligible for funding under § 455.71, and that institutions undertaking such ECMs comply with all applicable Federal, State, and local laws and regulations. Special attention should be paid to applicable State and Federal non-discrimination laws and regulations. DOE believes that these are reasonble requirements designed to assure that, when States use their ICP allocations for the newly allowable activities, eligible institutions benefit by obtaining ECMs that meet the basic eligibility standards of ICP. This does not mean, however, that requirements applicable only to Federally funded projects, such as Davis-Bacon wage rates, are applicable to the non-Federally funded ECMs.

Applications for these new grants must be made together with the application for the State administrative expense grant, if the State elects to apply for both types of grants. DOE is not proposing to require a matching contribution for these grants.

New Section 455.122 Applicant Certifications for State Grants for Technical Assistance, Program Assistance, and Marketing

DOE proposes to create this new section to cover the certifications States must submit to DOE if they elect to apply for the new types of grants provided for by the 1990 legislation. The State must certify that not more than 15 percent of the funds used for its ICP program in a fiscal year will be expended on technical assistance, program assistance, and marketing. As discussed earlier, States must have viable programs to fund their energy conservation measure programs from non-Federal sources in order to qualify to use their Federal allocations for technical assistance, program assistance, and marketing, and they must provide certifications to that effect. Energy conservation measures funded from such non-Federal sources would have to be eligible for funding under the ICP regulations. Institutions installing such measures would have to follow applicable Federal, State, and local laws and regulations. States that have constitutional prohibitions on providing State assistance to religiously affiliated institutions eligible under ICP, must certify that provision has been made for such institutions to receive assistance

for ECMs from DOE funded grants if such institutions would be ineligible to apply for the non-Federal sources of funding under the States's ECM program

New Section 455.123 Grantee Records and Reports for State Grants for Administrative Expenses, Technical Assistance, Program Assistance, and Marketing

DOE proposes creating new § 455.123 to cover the reporting requirements for grants made to States for administrative expenses, technical assistance, program assistance, and marketing. Some of the requirements were formerly found in old § 455.63; some are new, to cover the new types of grant activities provided for in the 1990 legislation. States funding technical assistance programs must submit reports to DOE listing the institutions receiving TAs and the amounts of assistance provided to each institution under the State program. States funding ECMs from non-Federal sources must submit to DOE reports which include lists of recipients of the non-Federal funding, together with the amounts of funding received and the types of ECMs installed by each recipient. In addition to providing necessary documentation to support a certification pursuant to § 455.122, and an application for an administrative expenses grant, these records are needed so that DOE is able to track the impact of its program funds, including the completion of projects using non-Federal funds related to the ICP appropriations. States need to report to DOE on all their grant activities, if they have been awarded funding for several activities such as administrative expenses, program assistance, marketing, and technical assistance.

New Subpart L—State Responsibilities

DOE proposes to redesignate old subpart F as new subpart L, which will include new §§ 455.130, 455.131, 455.132, 455.133, 455.134, 455.135, and 455.136. Some of these sections are new, and some are revised from old §§ 455.70, 455.71, 455.72, and 455.73.

New Section 455.130 State Evaluation of Grant Applications

DOE proposes revising paragraph (b) of new § 455.130 by deleting the requirement for review and certification of hospital applications under §§ 1524(c)(2) and 1603 of the Public Health Service Act (42 U.S.C. 300m–3 and 300o–2, respectively). This change is necessitated by the repeal of those sections of the Public Health Service Act. DOE is proposing a provision for State review and certification of hospital applications where there is a State requirement. New § 455.20 is also being revised to include a provision for States to specify special requirements for application review and certification for either schools or hospitals in State Plans. This proposed change is necessary because there are no longer uniform requirements for application review and certification.

New Section 455.131 State Ranking of Grant Applications

DOE proposes designating the opening paragraph of new § 455.131 (formerly § 455.71) as paragraph (a) and then revising it to provide for the exception to the ranking requirement mentioned in § 455.92, covering State technical assistance awards.

Former paragraph (a) then becomes new paragraph (b) and is revised to provide for the State EA requirements pursuant to § 455.20(k). This paragraph is also revised to add the wording "on a percentage basis" after energy conservation potential to provide an equal opportunity to small institutions whose conservation potential might be relatively low in absolute terms but still constitutes a sizeable portion of that institution's energy usage. Proposed for deletion in this paragraph is the former preference given to applicants which funded their own EAs. Since DOE no longer funds any EAs, that preference is now moot.

DOE proposes to redesignate former paragraph (b) as new paragraph (c), and then revise it by changing the second sentence to clarify that it applies when a State ranks on a building-by-building basis and by replacing the phrase "directly involves" with "is physically connected to." DOE then proposes adding a new sentence to explain that, when States rank on a measure-by-measure basis, an ECM that is physically connected to a number of buildings may be ranked as a single ECM. The important qualification here is that the ECM must be physically connected to all of the buildings. ECMs that are the same for a number of buildings, but not physically connected to all of them, such as storm windows or interior lights, must be ranked individually for each building in which they appear.

DOE then proposes to change the weighting requirements for ranking criteria so that the first criterion, cost effectiveness as determined by simple payback or life cycle cost analysis, must always receive at least 50 percent of the weight. This better reflects the importance of cost effectiveness over all other criteria. States are then allowed to set their own weights for the remaining criteria, as set forth in § 455.20(e).

DOE proposes redesignating old subparagraph (b)(3) as new subparagraph (c)(2), covering the types and quantities of energy to be saved. DOE then proposes several revisions for old subparagraph (b)(2): Redesignating it as (c)(3); deleting the phrase "in descending priority," and replacing it with "renewable energy"; and deleting old subparagraphs (b)(2) (i) and (ii) which refer to coal and renewable energy sources. These changes eliminate the priority given to renewable energy and coal and make the type of energy source to which conversion is proposed a criterion.

DOE proposes replacing old § 455.71(f) with a new § 455.131(g) which addresses only the State option of using school or hospital allocations for other applicants if the 30 percent minimum for each sector is not covered by applications. Old § 455.71(e), which covered applications for severe hardship, is being moved to a new § 455.132.

New Section 455.132 State Evaluation of Requests for Severe Hardship Assistance

DOE proposes to add this section which contains revised wording from old § 455.71(e). The primary change is to relegate to a secondary status, and make optional, the criteria unrelated to financial need. A sentence is added at the end of paragraph (c) which states that the primary consideration for hardship grants must be the institution's inability to provide its 50 percent share of the cost. Other factors such as fuel cost may be considered if the State determines they are valid. The optional secondary criteria have little or nothing to do with the fundamental question of whether the applicant is able to provide the 50 percent matching contribution. DOE believes that hardship grants, which may total up to 90 percent of the cost of a project under ICP, should be given only to institutions that are able to document they have a financial need for the additional funds. The secondary criteria such as fuel cost and availability and climate, which are mentioned in the Act, may be used by States to reinforce any hardship determination, but financial need must be the primary criterion.

DOE proposes revising subparagraph (d)(2) of new § 455.132 by adding a new last sentence stating that each State must decide on a case-by-case basis whether, and to what extent, it will recommend hardship funding for individual applicants. This change is proposed to emphasize that applications for hardship assistance must be

evaluated individually and should be recommended for funding on individual merit. Also, the State must decide how much additional funding to provide each applicant.

DOE also proposes adding to new § 455.132 a new paragraph (e) to clarify that, where there are insufficient applications from hardship applicants to cover the 10 percent allocation provided for in new paragraph 455.30(d), the State may use the remaining funds in that allocation for other qualified applicants. However, in no case may more than 10 percent of a State's allocation for schools and hospitals be awarded to hardship applicants. This new paragraph (e) clarifies what was intended to be stated in old paragraph 455.71(f). Unfortunately, because that paragraph included the phrase "without regard to the limitations of paragraphs (d) and (e) of this section," it was possible to interpret the paragraph to mean that the 10 percent hardship limitation could be exceeded if insufficient non-hardship applications were received by the State. It was never DOE's intention to allow hardship grants to exceed 10 percent.

New Section 455.133 Forwarding of Institutional Applications for Technical Assistance and Energy Conservation Measure Grants

DOE proposes to revise the title of this section to differentiate it from the next section covering grants to States. DOE then proposes revising paragraph (c) to require State certification of applications forwarded to DOE as having been reviewed and evaluated and found to have met all program requirements. This change is intended to emphasize the importance of the State role in reviewing grant applications.

New Section 455.134 Forwarding of Applications for State Grants for Technical Assistance, Program Assistance, and Marketing

DOE proposes to add this new section to cover the new grants provided for by the 1990 legislation. States that are eligible for such grants may apply for them any time after allocations are announced by DOE.

New Section 455.135 State Liaison, Monitoring, and Reporting

DOE proposes to renumber this section, formerly § 455.73.

New Section 455.140 Approval of Institutional Applications for Technical Assistance and Energy Conservation Measures

DOE is proposing to revise the title to differentiate this from the section on grants to States, and then to revise paragraph (d) as follows: By adding "to cover cost overruns or other additional costs" after "supplemental funds;" and replacing the word "awarded" with "provided for in the original grant award" to clarify the intent of the paragraph.

DOE is proposing, similarly, to revise paragraph (e) of this section by adding "to cover cost overruns or other additional costs" after the words "supplemental funds," and replacing the word "awarded" with "provided for in the original grant award." This again is intended to clarify the paragraph's intent.

DOE proposes to add a new paragraph (f) which allows each State to decide, in accordance with State plan criteria, whether, and under what circumstances, it will permit applicants to reapply for ECMs when those ECMs were funded in earlier grant cycles but were never implemented. DOE then proposes to add a new paragraph (g) which is a revised version of the second sentence of old § 455.80(e).

DOE further proposes adding a new paragraph (h) stating that funds that become available to a grantee after the installation of all approved ECMs, due to cost underruns in the installed ECMs, may be used for additional ECMs if approved by the State and DOE. Grantees must seek writtten approval from the State and DOE before committing funds from a cost underrun to other ECMs.

New Section 455.141 Grant Awards for Units of Local Government and Public Care Institutions

DOE proposes to delete the language prohibiting the procurement of "* * * any single item of equipment or tangible personal property having an acquisition cost in excess of $500 * * *," which would then make it possible to purchase meters and submeters under a TA grant. DOE is not imposing a dollar limit on such purchases, because different buildings may have varying needs for meters. However, DOE would expect prudence to be exercised in this regard. Meters and submeters should be considered an adjunct to the TA itself and should not be the major investment under the TA grant.

New Section 455.142 Grant Awards for Schools, Hospitals and Coordinating Agencies

DOE proposes the same kind of deletion as discussed under new § 455.141.

New Section 455.143 Grant Awards for State Administrative Expenses

DOE proposes revising subparagraph (a)(1) of new § 455.143 by deleting $30,000 and replacing it with $50,000 to reflect the new maximum base amount for State administrative expense grants which may be applied for and awarded after the State's allocation is announced by DOE. Then DOE is proposing to add a new subparagraph (a)(3) to provide for subsequent administrative grants to States that are providing non-Federal funding pursuant to § 455.121(a), up to 5 percent of the aggregate funding provided, less $50,000 if that was earlier awarded.

DOE proposes to delete the requirement for a 50 percent non-Federal share matching contribution for State administrative expense grants. This change is in response to comments DOE has received that a number of States are encountering difficulties in obtaining their non-Federal shares from State funds.

New Section 455.144 Grant Awards for State Programs To Provide Technical Assistance, Program Assistance, and Marketing

DOE proposes to add this section to cover the new grants provided for in the 1990 legislation. Requirements for these grants have already been discussed in this preamble. DOE is proposing that no match be required from the States for these grants; therefore, the rule provides that these grants may be for up to 100 percent of a State's projected costs in the cases of program assistance and marketing. It is important to note, however, that pursuant to new paragraph 455.144(b), a State may apply only for up to 50 percent of its allocation for marketing activities as defined in § 455.2. However, that grant may cover up to 100 percent of the State's costs for marketing. Conversely, while up to 100 percent of the State's allocation may be used for technical assistance, DOE is requiring that no more than 50 percent of individual TA costs be provided with these grant funds. DOE believes that institutions that receive TA funding through a State grant still should be required to provide a 50 percent matching contribution.

DOE is providing, in paragraph 455.144(d), for States which receive grants for technical assistance, program assistance, and marketing to apply to DOE to use some or all of those funds for regular grants to schools and hospitals if they cannot use the funds for the originally intended purpose in the required timeframe. Particularly in cases

in which a State finds it cannot obtain non-Federal sources of funding for ECMs, the State is obligated to revert, for that cycle, at least, to a regular ICP grant program.

As mentioned earlier in this preamble, DOE is particularly interested in receiving comments and suggestions on the implementation of these new grants, particularly how States integrate them with the non-Federally funded energy conservation improvements for schools and hospitals which must be undertaken concurrently with these other activities.

New Subpart N—Administrative Review

DOE proposes to include this entire subpart (§§ 455.150–155), which was finalized as part of the Grants Appeals Procedures rulemaking in the **Federal Register** published on October 10, 1990 (pages 41322–41327).

New Section 455.150 Right to Administrative Review

DOE proposes to add a new paragraph (b) to provide appeal rights for State applications for the new types of grants for technical assistance, program assistance, and marketing provided for by the 1990 legislation.

Response to Additional Suggestions

Over the years, DOE has received suggestions for changes to the program which cannot be considered because of statutory requirements or limitations. These suggestions, which cannot be implemented by revisions to the rule, include: (1) Eliminating hardship grants (or increasing the allocation for them); (2) changing the matching provisions from 50/50 to some other split; (3) funding ECMs for local government and public care buildings; (4) issuing a single grant to each State and having the States award the individual schools and hospitals ECM grants (except when a State applies to serve as a coordinating agency for all institutions including religiously affiliated institutions); (5) funding second TAs for buildings after a specified time period; and (6) funding ECMs which replace ECMs previously funded under the program.

DOE is interested in receiving comments on the suggested revisions proposed herein and in receiving other ideas for improving the program. In order for DOE to make informed decisions about any suggestions, it helps to have as much background as possible on why a change is needed and how it might be implemented, or on why a proposed revision should not be made or how it might be more effectively drafted.

Some States have expressed an interest in implementing some or all of the changes resulting from this rulemaking as soon as possible. DOE would be interested in receiving comments as to the desirability of allowing the final rulemaking to be effective during the program cycle in which it is published in the **Federal Register**, rather than wait until the start of the next cycle.

III. Review Under Executive Order 12291

Today's issuance was reviewed under Executive Order 12291. DOE has concluded that the rule is not a "major rule" because it 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 government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete in domestic or export markets. In accordance with the requirements of the Executive Order, this notice has been reviewed by the Office of Management and Budget (OMB).

IV. Review Under the Regulatory Flexibility Act

These regulations were reviewed under the Regulatory Flexibility Act, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses and small government jurisdictions. The changes proposed in this action primarily clarify the regulations or add flexibility to the existing program. Thus, these changes have a minimal effect on small entities. DOE therefore certifies that there will not be a significant economic impact on a substantial number of small entities, and that preparation of a regulatory flexibility analysis is not warranted.

V. Review Under the Paperwork Reduction Act

The information collection requirements proposed in this Notice have been submitted to OMB in accordance with section 3504(b) of the Paperwork Reduction Act, Public Law 96–511, 94 Stat. 2812 (44 U.S.C. 3510 *et seq.*), and procedures implementing that Act (5 CFR 1320.1 *et seq.*).

VI. Review Under National Environmental Policy Act

Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, 83 Stat. 852 (42 U.S.C. 4321 *et seq.*), DOE published a Notice of Availability of an Environmental Assessment (EA) of the entire Title III program on March 12, 1979, in the **Federal Register**, 44 FR 13554. Based on this assessment, DOE determined that the EPCA Title III program did not constitute a major Federal action significantly affecting the quality of the human environment, and that therefore, no Environmental Impact Statement (EIS) was required.

DOE has reviewed the environmental impacts for the program amendment proposed today. It is DOE's judgment that the proposed amendments will result in no environmental impacts in addition to those previously analyzed for this program. It is, accordingly, DOE's determination that the environmental impacts of the program as modified by today's proposed amendment have been adequately analyzed in the March 1979 EA, and that these impacts are not significant. Hence, the previous negative determination is still applicable, and no additional EA or EIS is required.

VII. Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, or in the distribution of power among various levels of Government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a Federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation.

Today's proposed regulatory amendments are intended to simplify the management of the program by providing the States with clearer, more specific guidance in a number of areas and greater flexibility in other areas. They will not, therefore, have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government.

VIII. Review Under the Federal Energy Administration Act

This notice was submitted for comment to the Administrator of the Environmental Protection Agency under section 7(c)(2) of the Federal Energy Administration Act, as amended, 15 U.S.C. 766(c)(2). The Administrator did not submit any comments.

IX. Catalog of Federal Domestic Assistance

The *Catalog of Federal Domestic Assistance* number for the Grant Program for Schools and Hospitals is 81.052.

X. Opportunity for Public Comment

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposal set forth in this notice. Comments should be submitted to the address for the Office of Hearings and Dockets, which is given in the beginning of this notice. The envelope and written comments submitted should be identified with the designation, "Notice of Proposed Rulemaking for Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions, Docket Number CE-RM-91-130." Ten (10) copies should be submitted.

All comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking action on a final rule.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, as well as ten (10) copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. This procedure is set forth in 10 CFR 1004.11.

B. Public Hearings

DOE will hold three public hearings on the proposed rule as specified at the beginning of this notice.

Any person who has an interest in the proposed rule or who is a representative of a group or class of persons which has an interest in it may make a request for an opportunity to make an oral presentation. Such a request to speak at the hearing should be directed to the Hearings and Dockets address given in the Addresses section of this notice and must be received by 4:30 p.m. local time on the date specified in the Dates section.

The person making the request should describe briefly his or her interest in the proceeding. The person should also provide a daytime phone number where the person may be reached. Those persons requesting an opportunity to provide oral testimony should bring ten (10) copies of their Statement to the hearing.

DOE reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 10 minutes.

A DOE official will preside at each hearing. These will not be judicial or evidentiary-type hearings. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting Statements. Any decision made by DOE with respect to the subject matter of the hearings will be based on all of the information available to DOE.

Any participant who wishes to ask a question at the hearing may submit the question in writing to the presiding officer. The presiding officer will determine whether the question is relevant and material, and whether time limitations permit it to be presented for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

If DOE must cancel a hearing, DOE will make every effort to give advance notice of such cancellation to interested parties. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates may be cancelled in the event no public testimony has been scheduled in advance.

List of Subjects in 10 CFR Part 455

Buildings, community facilities, energy audits, energy conservation, grant programs, energy, health facilities, hospitals, reporting and recordkeeping requirements, schools, solar and renewable energy, technical assistance.

Issued in Washington, DC on November 5, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy

Part 455 of chapter II, title 10, Code of Federal Regulations is revised to read as set forth below:

PART 455—GRANT PROGRAMS FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

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Authority: 42 U.S.C. 6371 *et seq.*; 42 U.S.C. 7101 *et seq.*

Subpart A—General Provisions

§ 455.1 Purpose and scope.

(a) This part establishes programs of financial assistance pursuant to Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6371 *et seq.*

(b) This part authorizes grants to States or to public or non-profit schools and hospitals to assist them in conducting preliminary energy audits and energy audits, in identifying and implementing energy conservation maintenance and operating procedures, and in evaluating, acquiring, and installing energy conservation measures, including renewable resource measures, to reduce the energy use and anticipated energy costs of buildings owned by schools and hospitals.

(c) This part also authorizes grants to States or units of local government and public care institutions to assist them in conducting preliminary energy audits and energy audits, in identifying and implementing energy conservation maintenance and operating procedures, and in evaluating energy conservation measures, including renewable resource measures, to reduce the energy use and anticipated energy costs of buildings owned by units of local government and public care institutions.

§ 455.2 Definitions.

Act, as used in this part, means the Energy Policy and Conservation Act, Pub. L. 94–163, 89 Stat. 871 (42 U.S.C. 6201, *et seq.*), as amended by Title III of the National Energy Conservation Policy Act, Public Law 95–619, 92 Stat. 3238 (42 U.S.C. 6371), and the State Energy Efficiency Programs Improvement Act of 1990, Public Law 101–440, 104 Stat. 1011.

Assistant Secretary means the Assistant Secretary for Conservation and Renewable Energy or any official to whom the Assistant Secretary's functions may be redelegated by the Secretary.

Auditor means any person who is qualified in accordance with 10 CFR 450.44 to conduct an energy audit.

Building means any structure, including a group of closely situated structural units that are centrally metered and are served by a central utility plant, or eligible portion thereof, the construction of which was completed on or before May 1, 1989, which includes a hearing or cooling system, or both.

Civil rights requirements means civil rights responsibilities of applicants and grantees pursuant to the Nondiscrimination in Federally Assisted Programs regulation of the Department of energy (10 CFR part 1040).

Complex means a closely situated group of buildings on a contiguous site such as a school or college campus or multibuilding hospital.

Construction completion means the date of issuance of an occupancy permit for a building or the date the building is ready for occupancy as determined by DOE.

Cooling degree days means the annual sum of the number of Fahrenheit degrees of each day's mean temperature above 65° for a given locality.

Coordinating agency means a State or any public or nonprofit organization legally constituted within a State which provides either administrative control or services for a group of institutions within a State and which acts on behalf of such institutions with respect to their participation in the program.

Deputy Assistant Secretary means the Deputy Assistant Secretary for Technical and Financial Assistance or any official to whom the Deputy Assistant Secretary's functions may be redelegated by the Assistant Secretary.

DOE means the Department of Energy.

Energy audit means a determination of the energy consumption characteristics of a building which:

(1) Identifies the type, size, and rate of energy consumption of such building and the major energy using systems of such building;

(2) Determines appropriate energy conservation maintenance and operating procedures; and

(3) Indicates the need, if any, for the acquisition and installation of energy conservation measures.

Energy conservation maintenance and operating procedures means modifications in the maintenance and operations of a building and any installation therein which are designed to reduce the energy consumption in such building and which require no significant expenditure of funds.

Energy conservation measure means an installation or modification of an installation in a building which is primarily intended to maintain or reduce energy consumption and reduce energy costs, or allow the use of an alternative energy source, including, but not limited to:

(1) Insulation of the building structure and systems within the building;

(2) Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated windows and door systems, additional glazing, reductions in glass area, and other window and door systems modifications;

(3) Automatic energy control systems which would reduce energy consumption;

(4) Load management systems which would shift demand for energy from peak hours to hours of low demand and lower cost;

(5) Equipment required to operate variable steam, hydraulic, and

ventilating systems adjusted by automatic energy control systems;

(6) Active or passive solar space heating or cooling systems, solar electric generating systems, or any combination thereof;

(7) Active or passive solar water heating systems;

(8) Furnace or utility plant and distribution system modifications including:

(i) Replacement burners, furnaces, boilers, or any combination thereof which substantially increase the energy efficiency of the heating system;

(ii) Devices for modifying flue openings which will increase the energy efficiency of the heating system;

(iii) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights; and

(iv) Utility plant system conversion measures including conversion of existing oil- and gas-fired boiler installations to alternative energy sources, including coal;

(9) Addition of caulking and weatherstripping;

(10) Replacement or modification of lighting fixtures (including exterior light fixtures which are physically attached to, or connected to, the building) to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless such increase in illumination is necessary to conform to any applicable State or local building code or, if no such code applies, the increase is considered appropriate by DOE;

(11) Energy recovery systems;

(12) Congeneration systems which produce steam or forms of energy such as heat, as well as electricity for use primarily within a building or a complex of buildings owned by an eligible institution and which meet such fuel efficiency requirements as DOE may by rule prescribe;

(13) Such other measures as DOE identifies by rule for purposes of this part, as set forth in subpart D of 10 CFR part 450; and

(14) Such other measures as a grant applicant shows will save a substantial amount of energy and as are identified in an energy audit in accordance with § 455.2 or § 455.20(k), or a technical assistance report in accordance with § 455.62.

Fuel means any commercial source of energy used within the building or complex being surveyed, such as natural gas, fuel oil, electricity, or coal.

Governor means the chief executive officer of a State, including the Mayor of the District of Columbia, or a person duly designated in writing by the Governor to act on her or his behalf.

Grant program cycle means the period of time specified by DOE which relates to the fiscal year or years for which monies are appropriated for grants under this part, during which one complete cycle of DOE grant activity occurs, including fund allocations to the States; applications receipt, review, approval, or disapproval; and award of grants by DOE, but which does not include the grantee's performance period.

Grantee means the entity or organization named in the Notice of Financial Assistance Award as the recipient of the grant.

Gross square feet means the sum of all heated or cooled floor areas enclosed in a building, calculated from the outside dimensions, or from the centerline of common walls.

Heating degree days means the annual sum of the number of Fahrenheit degrees for each day's mean temperature below 65° for a given locality.

Heating or cooling system means any mechanical system for heating, cooling, or ventilating areas of a building, including a system of through-the-wall air conditioning units.

Hospital means a public or nonprofit institution which is a general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care; and which is duly authorized to provide hospital services under the laws of the State in which it is situated.

Hospital facilities means buildings housing a hospital and related facilities, including laboratories, laundries, outpatient departments, nurses' residence and training facilities, and central service facilities operated in connection with a hospital; it also includes buildings housing education or training facilities for health professions personnel operated as an integral part of a hospital.

Indian tribe means any tribe, band, nation, or other organized group or community of Indians, including any Alaska native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act, Public Law 92-203; 85 Stat. 688, which is:

(1) Recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(2) Located on, or in proximity to, a Federal or State reservation or rancheria.

Load management system means a device or devices which are designed to shift energy use to hours of low demand in order to reduce energy costs and which do not cause more energy to be used than was used before their installation.

Local educational agency means a public board of education or other public authority or a nonprofit institution legally constituted within, or otherwise recognized by, a State either for administrative control or direction of, or to perform administrative services for, a group of schools within a State.

Maintenance means activities undertaken in a building to assure that equipment and energy-using systems operate effectively and efficiently.

Marketing means a program or activity managed by the State and designed to obtain non-Federal funds to finance energy conservation measures consistent with this part.

Native American means a person who is a member of an Indian tribe.

Operating means the operation of equipment and energy-using systems in a building to achieve or maintain specified levels of environmental conditions of service.

Owned or *owns* means property interest, including without limitation a leasehold interest, which is, or shall become, a fee simple title in a building or complex.

Preliminary energy audit means a determination of the energy consumption characteristics of a building, including the size, type, rate of energy consumption, and major energy-using systems of such building.

Primarily occupied means that in excess of 50 percent of a building's square footage or time of occupancy is occupied by a public care institution or an office or agency of a unit of local government.

Program assistance means a program or activity managed by the State and designed to provide support to eligible institutions to help ensure the effectiveness of energy conservation programs carried out consistent with this part, including such relevant activities as:

(1) Evaluating the services of consulting engineers;

(2) Training school or hospital personnel to perform energy accounting;

(3) Monitoring the implementation and operation of energy conservation measures; and

(4) Aiding in the procurement of energy efficient equipment.

Public care institution means a public or nonprofit institution which owns:

(1) A facility for long-term care, rehabilitation facility, or public health center, as described in section 1624 of the Public Health Service Act (42 U.S.C. 300s-3; 88 Stat. 2270); or

(2) A residential child care center, which is an institution, other than a foster home, operated by a public or nonprofit institution. It is primarily intended to provide full-time residential care, with an average length of stay of at least 30 days, for at least 10 minor persons who are in the care of such institution as a result of a finding of abandonment or neglect or of being persons in need of treatment or supervision.

Public or nonprofit institution means an institution owned and operated by:

(1) A State, a political subdivision of a State, or an agency or instrumentality of either; or

(2) A school or hospital which is, or would be in the case of such entities situated in American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954; or

(3) A unit of local government or public care institution which is, or would be in the case of such entities situated in American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, exempt from income tax under section 510(c)(3) or 501(c)(4) of the Internal Revenue Code of 1954.

School means a public or nonprofit institution which:

(1) Provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis;

(2) Provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis and:

(i) Admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(ii) Is accredited by a nationally recognized accrediting agency or association; and

(iii) Provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program;

(3) Provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions cited in paragraph (b), and subparagraphs (b)(1), and (b)(2) of this definition; or

(4) Is a local educational agency.

School facilities means buildings housing classrooms, laboratories, dormitories, administrative facilities, athletic facilities, or related facilities operated in connection with a school.

Secretary means the Secretary of the Department of Energy, or his/her designee.

State means, in addition to the several States of the Union, the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.

State energy agency means the State agency responsible for developing State energy conservation plans pursuant to section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322) or, if no such agency exists, a State agency designated by the Governor of such State to prepare and submit the State Plan required under section 394 of the Energy Policy and Conservation Act.

State hospital facilities agency means an existing agency which is broadly representative of the public hospitals and the nonprofit hospitals or, if no such agency exists, an agency designated by the Governor of such State which conforms to the requirements of this definition.

State school facilities agency means an existing agency which is broadly representative of public institutions of higher education, nonprofit institutions of higher education, public elementary and secondary schools, nonprofit elementary and secondary schools, public vocational education institutions, nonprofit vocational education institutions, and the interests of handicapped persons in a State or, if no such agency exists, an agency which is designated by the Governor of such State which conforms to the requirements of this definition.

Support office director means the Director of the DOE field support office with the responsibility for grant administration or any official to whom that function may be redelegated.

Technical assistance means: (1) The conduct of specialized studies to identify and specify energy savings or energy cost savings that are likely to be realized as a result of the modification of maintenance and operating procedures in a building, the acquisition and installation of one or more specified energy conservation measures in a building, or both; and (2) the planning or administration of such specialized studies.

For schools and hospitals which are eligible to receive grants to carry out energy conservation measures, the term also means the planning or administration of specific remodeling, renovation, repair, replacement, or insulation projects related to the installation of energy conservation or renewable resource measures in a building.

Unit of local government means the government of a county, municipality, parish, borough, or township, which is a unit of general purpose goverment below the State (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes) and the District of Columbia. Such term also means the recognized governing body of an Indian tribe which governing body performs substantial governmental functions, and includes libraries which serve all residents of a political subdivision below the State level (such as a community, district or region) free of charge and which derive at least 40 percent of their operating funds from tax revenues of a taxing authority below the State level.

§ 455.3 Administration of grants.

Grants provided under this part shall comply with applicable law, regulation or procedure including, without limitation, the requirements of:

(a) The DOE Financial Assistance Rules (10 CFR part 600 as amended), except as otherwise provided in this rule;

(b) Executive Order 12372 entitled "Intergovernmental Review of Federal Programs" (48 FR 3130, January 24, 1983; 3 CFR, 1982 Comp., p. 197), and the DOE regulation implementing this Executive Order entitled "Intergovernmental Review of Department of Energy Programs and Activities" (10 CFR part 1005);

(c) Office of Management and Budget Circular A-97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specified or Technical Services to State and Local Units of Government under Title III of the Inter-Governmental Coordination Act of 1968," available from the Office of Management and Budget, Office of Publication Services, 725 17th Street, NW., Washington, DC 20503;

(d) DOE regulation entitled "Nondiscrimination in Federally Assisted Programs" (10 CFR part 1040), which implements the following public laws: Title VI of the Civil Rights Act of 1964; section 16 of the Federal Energy Administration Act of 1974; section 401 of the Energy Reorganization Act of 1974; Title IX of the Education Amendments of 1972; The Age Discrimination Act of 1975; and section

504 of the Rehabilitation Act of 1973; and

(e) Such other procedures applicable to this part as DOE may from time to time prescribe for the administration of financial assistance.

§ 455.4 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required and specified by the DOE Financial Assistance Rules, 10 CFR part 600, and this part.

§ 455.5 Suspension and termination of grants.

Suspension and termination procedures shall be as set forth in the DOE Financial Assistance Rules, 10 CFR part 600.

Subpart B—State Plan Development and Approval

§ 455.20 Contents of State Plan.

Each State shall develop and submit to DOE a State Plan for technical assistance programs and energy conservation measures, including renewable resource measures and, to the extent appropriate, program assistance and/or marketing. The State Plan shall include:

(a) A statement setting forth the procedures by which the views of eligible institutions or coordinating agencies representing such institutions, or both, were solicited and considered during development of the State Plan and any amendment to a State Plan;

(b) The procedures the State will follow to notify eligible institutions and coordinating agencies of the content of the approved State Plan, or any approved amendment to a State Plan;

(c) The procedures the State will follow to notify eligible institutions and coordinating agencies of the availability (each funding cycle) of funding under this program and related funding available from non-Federal sources to fund technical assistance programs and energy conservation measures consistent with this Part;

(d) The procedures for submittal of grant applications to the State;

(e) The procedures to be used by the State for evaluating and ranking technical assistance and energy conservation measure grant applications pursuant to § 455.130 and § 455.131, including the weights assigned to each criterion set forth in §§ 455.131(c)(2), (c)(3), (c)(4) and (c)(5). In addition, the State shall determine the order of priority given to fuel types that include oil, natural gas, and electricity, under § 455.131(c)(2);

(f) The procedures that the State will follow to insure that funds will be allocated equitably among eligible applicants within the State, including procedures to insure that funds will not be allocated on the basis of size or type of institution, but rather on the basis of relative need, taking into account such factors as cost, energy consumption, and energy savings, in accordance with § 455.131;

(g) The procedures that the States will follow for identifying schools and hospitals experiencing severe hardship and for apportioning the funds that are available for schools and hospitals in a case of severe hardship. Such policies and procedures shall be in accordance with § 455.132;

(h) A statement setting forth the extent to which, and by which methods, the State will encourage utilization of solar space heating, cooling and electric systems, and solar water heating systems;

(i) The procedures to assure that all financial assistance under this part will be expended in compliance with the requirements of the State Plan, in compliance with the requirements of this part, and in coordination with other State and Federal energy conservation programs;

(j) If a State is eligible and elects to use up to 100 percent of the funds provided by DOE under this part for any fiscal year for program and technical assistance and/or up to 50 percent of such funds for marketing:

(1) A description of each activity the State proposes, including the procedures for program operation, monitoring, and evaluation;

(2) The level of funding to be used for each program and the source of those funds;

(3) The amount of the State's allocated funds that the State proposes to use for each;

(4) A description of the non-Federal financing mechanisms to be used to fund energy conservation measures in the State during the fiscal year;

(5) A description of the evaluation/selection criteria to be used by the State in determining which institutions receive funding for energy conservation measures;

(6) The procedures for assuring that all segments of the State's eligible institutions, including religiously affiliated institutions receive an equitable share of the assistance provided both for program and technical assistance, marketing, and energy conservation measures;

(7) A description of how the State will track: the amount of total available funds by source; the amount of funds obligated against those funds; and any limits on types of institutions eligible for particular funding sources; and

(8) The procedures for assuring that institutions which initially receive program, technical, or marketing assistance as part of the State's special program(s) later participate in the State's program(s) to provide energy conservation measure funding;

(k) The requirements for an energy audit to be used as the basis for a technical assistance program grant application;

(l) With regard to energy conservation maintenance and operating procedures:

(1) The procedures to insure implementation of energy conservation maintenance and operating procedures in those buildings for which financial assistance is requested under this part;

(2) A provision that all maintenance and operating procedure changes recommended in an energy audit pursuant to § 455.20(k), or in a technical assistance report under § 455.62, or a combination of these, are implemented as provided under this part; or

(3) An assurance that the maintenance and operating procedures will be implemented in the future, or a reasonable justification for not implementing such procedures, as appropriate.

(m) The procedures to assure that financial assistance under this part will be used to supplement, and not to supplant, State, local or other funds, including at least:

(1) The screening of applicants for eligibility for available State funds; and

(2) The identification of applicants which are seeking or have obtained private sector funds;

(n) The procedures for determining that technical assistance programs performed without the use of Federal funds and used as the basis for energy conservation measure grant applications have been performed in compliance with the requirements of § 455.62, for the purposes of satisfying the eligibility requirements contained in § 455.71(a)(3);

(o) The State's policy regarding reasonable selection of energy conservation measures for study in a technical assistance program, including any restriction based on category of building, and any additional State requirements for the conduct of such a program;

(p) The procedures for State management, monitoring, and evaluation of technical assistance programs and energy conservation measures receiving financial assistance under this part. This includes any State requirements for hospital certifications

from a State agency, with descriptions of the review procedures and coordination process applicable in such cases. If there is no school facilities agency in the State, or if the existing agency does not certify all types of schools, it also includes any State requirements for an alternative review and certification process for schools;

(q) The circumstances under which the State requires an updated technical assistance program report to accompany an application for an energy conservation measure grant;

(r) A description of the State's policies for establishing and insuring compliance with qualifications for technical assistance analysts. Such policies shall require that technical assistance analysts be free from financial interests which may conflict with the proper performance of their duties and have experience in energy conservation and:

(1) Be a registered professional engineer licensed under the regulatory authority of the State;

(2) Be an architect-engineer team, the principal members of which are licensed under the regulatory authority of the State; or

(3) Be otherwise qualified in accordance with such criteria as the State may prescribe in its State Plan to insure that individuals conducting technical assistance programs possess the appropriate training and experience in building energy systems;

(s) The circumstances under which the State will or will not consider accepting applications for energy conservation measures which were included in earlier approved grant awards but which were not implemented and for which no funds were expended after the original grant award;

(t) A statement setting forth:

(1) An estimate of energy savings which may result from the modification of maintenance and operating procedures and installation of energy conservation measures;

(2) A recommendation as to the types of energy conservation measures considered appropriate within the State; and

(3) An estimate of the costs of carrying out technical assistance and energy conservation measure programs;

(u) For purposes of the technical assistance program pursuant to § 455.62:

(1) A statement setting forth uniform conversion factors to be used by all grant applicants in the technical assistance analysis for conversion of fuels to Btu equivalents. For the conversion of kilowatt hours to Btu's, the State shall use 3,413, representing consumption at the consumer's end; and

(2) A statement setting forth the cost effectiveness testing approach to be used to evaluate energy conservation measures pursuant to § 455.63. States may select either the simple payback approach or the life cycle costing approach. Only one approach may be used for all technical assistance programs in the State;

(v) If a State plans to act as a coordinating agency, a description of its functions and a copy of its plan for serving in this role; and

(w) If a State elects to allow credit toward the cost share for an energy conservation measure for the costs of technical assistance programs, technical assistance program updates, or energy conservation measures previously incurred and wholly paid for with non-Federal funds, the policies regarding such credit consistent with the limitations in § 455.102.

§ 455.21 Submission and approval of State plans and State plan amendments.

(a) Proposed State Plans or plan amendments necessitated by a change in regulations shall be submitted to DOE within 90 days of the effective date of this subpart or any amended regulations. DOE upon request, and for good cause shown, may grant an extension of time.

(b) DOE shall, within 60 days of receipt of a proposed State Plan, review each plan and, if it is reasonable and found to conform to the requirements of this part, approve the State Plan. If DOE does not disapprove a State Plan within the 60-day period, DOE will be deemed to have approved the State Plan.

(c) If DOE determines that a proposed State Plan fails to comply with the requirements of this part or is not reasonable, DOE shall return the plan to the State with a statement setting forth the reasons for disapproval.

(d) Except for State Plan amendments covered by paragraph (a) of this section, if a State wishes to deviate from its approved State Plan, the State must submit and obtain DOE approval of the State Plan amendment.

(e) DOE shall, within 60 days of receipt of a proposed State Plan amendment, review each amendment and, if it is found to conform to the requirements of this part, approve the amendment. If DOE determines that a proposed State Plan amendment fails to comply with the requirements of this part, or is not reasonable, DOE shall return the amendment to the State with a statement setting forth the reasons for disapproval. With the consent of DOE, the State may submit a new or amended plan at any time.

Subpart C—Allocation of Appropriations Among the States

§ 455.30 Allocation of funds.

(a) DOE will allocate available funds among the States for two purposes: To award grants to schools, hospitals, units of local government, and public care institutions and coordinating agencies representing them to implement technical assistance and energy conservation measures grant programs; and to award grants to eligible States for administrative expenses, technical assistance programs, program assistance, and marketing expenses in accordance with this part.

(b) DOE shall notify each Governor of the total amount allocated for grants within the State for any grant program cycle:

(1) For schools and hospitals, the allocation amount shall be for technical assistance programs, together with any limitation placed on technical assistance, and energy conservation measures;

(2) For States that are eligible pursuant to § 455.91, up to 100 percent of the funds allocated to the State by DOE may be used for technical assistance programs and/or for program assistance, and up to 50 percent of the funds allocated to the State by DOE may be used for marketing as defined in § 455.2;

(3) For States eligible under § 455.81, a portion of the allocation may be used for a grant to the State for administrative expenses, as described in § 455.120; and

(4) For units of local government and public care institutions, the allocation amount shall be solely for technical assistance programs.

(c) DOE shall notify each Governor of the period for which funds allocated for a grant program cycle will be made available for grants within the State.

(d) Each State shall make available up to 10 percent of its allocation for schools and hospitals in each grant program cycle to provide financial assistance, not to exceed a 90 percent Federal share, for technical assistance programs and energy conservation measures for schools and hospitals determined to be in a class of severe hardship. Such determinations shall be made in accordance with § 455.132.

§ 455.31 Allocation formulas.

(a) Financial assistance for conducting technical assistance programs for units of local government and public care institutions shall be allocated among the States by multiplying the sum available by the allocation factor set forth in paragraph (c) of this section.

(b) Financial assistance for conducting technical assistance programs and acquiring and installing energy conservation measures, including renewable resource measures, for schools and hospitals, shall be allocated among the States by multiplying the sum available by the allocation factor set forth in paragraph (c) of this section.

(c) The allocation factor (K) shall be determined by the formula:

$$K=0.07/N+0.1\ (Sfc)/(Nfc)+0.83\ (SP)(SC)/(NPC)$$

where, as determined by DOE:

(1) Sfc is the projected average retail cost per million Btu's of energy consumed within the region in which the State is located, as contained in current regional energy cost projections obtained from DOE.

(2) Nfc is the summation of the Sfc numerators for all States;

(3) N is the total number of eligible States;

(4) SP is the population of the State, as contained in the most recent Bureau of the Census, Department of Commerce, Official Census documents;

(5) SC is the sum of the State's heating and cooling degree days, as contained in the National Oceanic and Atmospheric Administration's most recent editions of "State, Regional and National Monthly and Seasonal Heating Degree Days, Weighted by Population"; and "State, Regional and National Monthly and Seasonal Cooling Degree Days, Weighted by Population"; and

(6) NPC is the summation of the (SP)(SC) numerators for all States.

(d) Except for the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, no allocation available to any State may be less than 0.5 percent of all amounts allocated in any grant program cycle. No State will be allocated more than 10 percent of the funds allocated in any grant program cycle.

§ 455.32 Reallocation of funds.

(a) If a State Plan has not been approved and implemented by a State by the close of the period for which allocated funds are available as set forth in the notice issued by DOE pursuant to § 455.30(c), funds allocated to that State for technical assistance and energy conservation measures will be reallocated among all States for the next grant cycle, if available.

(b) Funds which have been allocated to States in a grant program cycle but which have not been obligated to eligible State, school, or hospital grant applicants by the end of that cycle shall be reallocated by DOE among all States in the next grant program cycle.

(c) Funds which become available due to deobligations resulting from funds returned by grantees due to cost underruns or scope-of-work reductions on completed projects shall be reallocated by DOE among all States in the next grant program cycle.

(d) Funds which become available because of declined grants to schools and hospitals within a State may be reobligated to other eligible applicants in the State until the December 31 following the close of the cycle for which the funds were allocated to the State.

(e) Funds which become available because of grants declined by schools and hospitals after the December 31 following the close of the cycle for which the funds were allocated to the State will be reallocated by DOE among all States in the next grant program cycle.

(f) Funds granted to States for technical assistance, program assistance, and marketing pursuant to § 455.144 are subject to reallocation by DOE among all the States in the next grant program cycle if such funds are not committed by the State to their intended purposes by means of grants, contracts, or other legally binding obligations, or redirected to schools and hospitals grant applications pursuant to § 455.144(d), by the December 31 following the close of the cycle for which the funds were allocated to the State.

Subpart D—Preliminary Energy Audit and Energy Audit Grant Procedures

§ 455.40 Purpose and scope.

(a) This subpart contains the regulations whereby DOE shall provide financial assistance for preliminary energy audits and energy audits.

(b) Preliminary energy audits are to be performed by States for the purpose of:

(1) Determining the energy use characteristics of eligible school and hospital facilities, and buildings owned by units of local government and public care institutions, including the size, type, rate of energy use and major energy using systems of such buildings within the State;

(2) Establishing a data base from which reasonably accurate estimates may be made of the number of eligible institutions, the number of qualifying buildings, and patterns of energy conservation needs including an indication of the opportunities for use of renewable energy sources; and

(3) Assisting States in development of a sound and complete State Plan which is a prerequisite to receipt of financial assistance for technical assistance or energy conservation measures, including renewable resource measures.

(c) Energy audits are to be performed by States or eligible schools, hospitals, units of local government and public care institutions for the purpose of:

(1) Determining the energy use characteristics of eligible school and hospital facilities, and buildings owned by units of local government and public care institutions, including the size, type, rate of energy use and major energy using systems of such buildings within the State;

(2) Identifying and encouraging adoption of energy conservation maintenance and operating procedures;

(3) Indicating potential, if any, for acquiring and installing energy conservation measures, including possible use of renewable resources; and

(4) Providing, to the greatest extent practicable, consistent information necessary to identify those buildings eligible to receive priority for additional financial assistance.

§ 455.41 Financial assistance.

(a) DOE shall provide financial assistance from sums appropriated only upon application in accordance with the provisions of this subpart.

(b) DOE may make grants for purposes of conducting preliminary energy audits and energy audits of school facilities and hospital facilities.

(c) DOE may make grants for purposes of conducting preliminary energy audits and energy audits of buildings owned by units of local government and public care institutions.

§ 455.42 Cost sharing.

(a) Amounts made available under this subpart, together with any other amounts made available from other Federal sources, may not be used to pay more than 50 percent of the costs of a preliminary energy audit or an energy audit, except as provided in paragraph (b) of this section.

(b) The Governor of a State may request a grant of up to 100 percent of the costs of any preliminary energy audit or energy audit for schools or hospitals. When financial assistance in excess of the 50 percent cost share limitation is provided to a State, the sum allocated to that State for technical assistance and energy conservation measures, including renewable resource measures shall be reduced by an equal amount. Such funds shall be reallocated among all other States on the same basis as the initial allocation. DOE may

make such a grant if the State has demonstrated that:

(1) The State would otherwise be unable to participate in the program; and

(2) The amount of the additional financial assistance requested is the minimum necessary to allow the State to participate.

(c) Where a State has expended funds without financial assistance under this subpart for the conduct of preliminary energy audits or energy audits commenced on or after November 9, 1978, DOE may, upon application and approval under this subpart, accept all or any portion of such expenditures as constituting State matching funds.

(d) To the extent that funds allocated to a State for preliminary energy audits and energy audits are not needed because all potentially eligible buildings have had or will have an energy audit or its equivalent conducted, such funds may be made available for technical assistance or energy conservation measures. DOE shall, upon request by the State, redistribute funds not needed for preliminary energy audits and energy audits to the State allocation for technical assistance or energy conservation measures, as appropriate, and such funds shall be in addition to those which would otherwise be available for such purposes.

(e) Amounts to be used to meet the cost-sharing requirements of this part must meet the requirements for cost-sharing set forth in the DOE Financial Assistance Rules, 10 CFR part 600.

§ 455.43 Allocation of funds for preliminary energy audits and energy audits.

(a) Financial assistance for conducting preliminary energy audits and energy audits of school facilities and hospital facilities shall be allocated among the States by multiplying the sum available by the allocation factor (F).

(b) Financial assistance for conducting preliminary energy audits and energy audits of buildings owned by units of local government and public care institutions shall be allocated among the States by multiplying the sum available by the allocation factor (F).

(c) The allocation factor (F) shall be determined by the formula:

$$F = \frac{(.1)}{(n)} + \frac{(.7SP)}{(NP)} + \frac{(.2SC)}{(NC)}$$

where, as determined by DOE:

(1) n is the total number of eligible States;

(2) SP is the population of the State, as contained in the most recent Bureau of the Census, Department of Commerce, Official Census documents;

(3) NP is the total population of all States;

(4) SC is the sum of the State's heating and cooling degree days, contained in the National Oceanic and Atmospheric Administration's most recent editions of "State, Regional and National Monthly and Seasonal Heating Degree Days Weighted By Population," and "State, Regional and National Monthly and Seasonal Cooling Degree Days Weighted By Population"; and

(5) NC is the sum of all States' heating and cooling degree days.

(d) Financial assistance allocated to a State pursuant to this subpart for a grant program cycle which remains unobligated at the end of the grant program cycle shall, if available, be reallocated under paragraph (b) or (b) of this section, as appropriate, in the subsequent grant program cycle.

§ 455.44 Submission and review of applications.

(a) To be eligible to receive financial assistance, a State shall complete and submit an original copy of the application to DOE. Such application shall be signed by the Governor or his designee.

(b) The first State application shall be submitted not later than 30 days after the effective date of this subpart. Subsequent State applications shall be submitted for each grant program cycle on or before the date established by DOE for:

(1) Schools and hospitals;

(2) Buildings owned by units of local government and public care institutions; or

(3) Both.

(c) The State shall consult with representatives of schools, hospitals, units of local government, and public care institutions during the preparation of applications for financial assistance for preliminary energy audits and energy audits.

(d) The Governor may request an extension of the submission date for a State's application by sending a written request to DOE prior to the date upon which it is due. An extension will only be provided for good cause shown. Such a request shall include a brief discussion of work remaining to be done on the application and time required for its completion. An extension shall not exceed 60 days except where additional time may be required by a State to enact enabling legislation, or where DOE finds an additional extension to be consistent with the overall objectives of the Act and the requirements of this subpart.

(e) DOE shall review each timely State application and provide financial assistance if DOE determines that the application meets the objectives of the Act and the requirements of this part.

(f) All or any portion of an application under this section may be disapproved to the extent that funds are not available under this subpart to carry out such application or portion thereof.

(g) DOE shall state in writing the reasons any application is disapproved. Applications not approved by DOE may be resubmitted by the applicant at any time within the grant program cycle in the same manner as the original application, and DOE shall approve such resubmitted application if it is found to be in compliance with the requirements of this subpart. Amendments of an application shall, except as DOE may otherwise provide, be subject to approval in the same manner as the original application.

§ 455.45 Content of applications.

(a) An application shall contain:

(1) The name and mailing address of the proposed State grantee;

(2) A budget which shall include identification of the sources, amounts, and intended use of non-Federal funds required to meet the cost-sharing provisions of § 455.42; and

(3) Assurance that preliminary energy audit and energy audit procedures to be employed will meet the requirements of this part.

(b) For each program for which financial assistance is sought, a State application shall also contain:

(1) A timetable, including a listing of milestones for the activities to be carried out by calendar quarters for each program for which financial assistance will be provided;

(2) A description of materials to be developed and adopted, or an identification of existing materials to be used, to meet the requirements for conducting preliminary energy audits and energy audits, including provision of data concerning heating degree days, cooling degree days, insolation, and wind speed for regions within the State;

(3) A description of the training to be provided to those persons who will conduct energy audits. Such training shall, at a minimum, use as instructors, architects, or engineers who have had practical experience in performing energy audits. The minimum qualifications of those attending the training course, and the minimum qualifications of those who will be permitted to perform energy audits

without having attended the training course, shall also be described;

(4) An explanation of how the size of the sample and the selection of sample buildings will be determined in those instances where a sampling methodology is used in the conduct of preliminary energy audits; and

(5) A description of the methods which will be used to advise eligible institutions of the availability of assistance under this subpart, and the amounts available by categories of institutions as determined under paragraphs (c)(3) and (d)(2) of this section.

(c) A State application for financial assistance to conduct preliminary energy audits and energy audits of schools and hospital facilities shall contain:

(1) A description of the procedures the State will use to provide funding or services to those schools and hospitals which are willing and able to conduct their own energy audits;

(2) A justification for any funding applied for in excess of the 50 percent limit provided in paragraph (a) of § 455.42;

(3) A description of the method by which funds will be apportioned between school facilities and hospital facilities, including a justification for the apportionment if fewer than all such facilities will be audited;

(4) An explanation of the manner in which activities to be conducted shall be consistent with:

(i) Related State programs for educational facilities in such State; and

(ii) State health plans under sections 1524(c)(2) (42 U.S.C. 300m-3; 88 Stat. 2247) and 1603 (42 U.S.C. 300o-2, 88 Stat. 2259) of the Public Health Service Act; and

(5) A description of the actions taken by the State to solicit and consider the views of representatives of schools and hospitals during the preparation of the State's application.

(d) A State application for financial assistance to conduct preliminary energy audits and energy audits of buildings owned by the units of local government and public care institutions shall contain a description of:

(1) The procedures the State will use to provide funding or services to those units of local government and public care institutions which are willing and able to conduct their own energy audits;

(2) The method by which funds will be apportioned between buildings owned by units of local government and public care institutions including a justification for the apportionment if fewer than all these buildings will be audited; and

(3) The action taken by the State to solicit and consider the views of representatives of units of local government and public care institutions during the preparation of the State's application.

(e) A State application shall set forth procedures:

(1) By which buildings or complexes eligible for preliminary energy audits and energy audits will be identified, and a listing thereof prepared and maintained;

(2) For the State to participate, on a selective sampling basis, in the performance of on-site energy audits to assure that the findings present a reasonably thorough and accurate assessment of the buildings surveyed; and

(3) For the State to conduct followup visits, on a selective sampling basis, to ascertain the degree of implementation of energy audit results.

§ 455.46 Use of funds.

(a) A State shall either carry out preliminary energy audits and energy audits of schools and hospitals, or provide for the conduct of such audits by schools and hospitals, through use of funds which the State has received pursuant to paragraph (b) of § 455.41.

(b) A State shall either carry out preliminary energy audits and energy audits of buildings owned by units of local government and public care institutions, or provide for the conduct of such audits by units of local government and public care institutions, through the use of funds which the State has received pursuant to paragraph (c) of § 455.41.

(c) No financial assistance provided under this subpart shall be expended for the audit of:

(1) A vacant, unused or condemned building;

(2) A stadium which is part of a school facility used primarily for exhibitions for which admission is charged and which is not also generally used for intramural sports and physical fitness programs generally available to all students; or

(3) A building or complex owned by a unit of local government or a public care institution:

(i) Not primarily occupied by such institution; or

(ii) Which is intended for seasonal use.

(d) Of the financial assistance provided to a State under this subpart, not more than 25 percent shall be expended for:

(1) Administrative expenses;

(2) Development of materials for the conduct of preliminary energy audits and energy audits;

(3) Training of personnel to conduct energy audits;

(4) Conducting preliminary energy audits and sample energy audits; and

(5) Monitoring and evaluation.

(e) At least 75 percent of the financial assistance provided under this subpart shall be used in conducting energy audits of buildings, including costs of personnel attending training sessions conducted by the State preparatory to performing energy audits.

(f) A State may request, and DOE may approve, a waiver of the limitations required under paragraphs (d) and (e) of this section, provided the State demonstrates that such a waiver would permit the conduct of more energy audits than would otherwise be conducted under the provisions of this section.

§ 455.47 Reporting requirements.

(a) Each State receiving financial assistance under this part shall submit to DOE a quarterly program performance report and a quarterly financial status report. The reports shall be submitted to DOE within 30 days following the end of each calendar quarter.

(b) The quarterly program performance report shall include:

(1) For those buildings which have received a preliminary energy audit or an energy audit, a summary of the categories, types of ownership, functional uses, gross square feet and energy use levels; and

(2) For those buildings which have received an energy audit:

(i) An estimate of the savings anticipated from energy conservation operation and maintenance procedure changes identified; and

(ii) An approximation of the energy savings indicated from applicable energy conservation measures if the procedure used by the State results in such information or a summary of the number of buildings for which the energy audit indicates potential for energy conservation measures, including renewable resource measures.

(c) The second quarterly report shall also include:

(1) The total sum required for energy audits of buildings whose owners have been advised of selection to receive an energy audit;

(2) A copy of the materials adopted by the State for conducting energy audits;

(3) The apportionment of funds pursuant to paragraphs (c)(3) and (d)(2) of § 455.45 and the data on which such apportionment was based;

(4) The listing of institutions and their building compiled pursuant to the

provisions of paragraph (e)(1) of § 455.45 summarized by category, types of ownership, and functional use;

(5) Any necessary revisions to the estimate of the characteristics and energy conservation potential of buildings owned by eligible institutions resulting from the sample preliminary energy audits, if a sampling approach was used.

(d) Copies of preliminary energy audit and energy audit reports made by or furnished to the State under § 450.45 of this chapter shall be submitted to DOE together with the quarterly report.

(e) Reports shall contain such other information as may be required by DOE.

§ 455.48 Contents of a preliminary energy audit. [Reserved]

§ 455.49 Contents of an energy audit. [Reserved]

Subpart E—Technical Assistance Programs for Schools, Hospitals, Units of Local Government, and Public Care Institutions

§ 455.60 Purpose.

This subpart specifies what constitutes a technical assistance program eligible for financial assistance under this part, and sets forth the eligibility criteria for schools, hospitals, units of local government, and public care institutions to receive grants for technical assistance to be performed in buildings owned by such institutions.

§ 455.61 Eligibility.

To be eligible to receive financial assistance for a technical assistance program, an applicant must:

(a) Be a school, hospital, unit of local government, public care institution, or coordinating agency representing them, all as defined in § 455.2, except that financial assistance for units of local government and public care institutions will be provided only for buildings which are owned and primarily occupied by offices or agencies of a unit of local government or public care institution and which are not intended for seasonal use and not utilized primarily as a school or hospital eligible for assistance under this program; and

(b) Be located in a State which has an approved State Plan as described in Subpart B of this part;

(c) Have available the information required by the State as the substantiation for the technical assistance program grant application pursuant to § 455.20(k) for the building for which financial assistance is to be requested, subsequent to the most recent construction, reconfiguration, or utilization change which significantly modified energy use within the building;

(d) Give assurance that it has implemented all energy conservation maintenance and operating procedures identified in the description of the building required by the State pursuant to § 455.20(k) or provide a written justification for not implementing them pursuant to § 455.20(l)(3); and

(e) Submit an application in accordance with the provisions of this part and the approved State Plan.

§ 455.62 Contents of a technical assistance program.

(a) The purpose of a technical assistance program is to provide a report based on an on-site analysis of the building which meets the requirements of this section and the State's procedures for implementing this section.

(b) A technical assistance program shall be designed to identify and document energy conservation maintenance and operating procedure changes and energy conservation measures in sufficient detail to support possible application for an energy conservation measure grant, and to provide reviewers and decisionmakers handling such applications sufficient information upon which to base a decision.

(c) A technical assistance program shall be conducted by a technical assistance analyst, who has the qualifications established in the State Plan in accordance with § 455.20(r).

(d) At the conclusion of a technical assistance program, the technical assistance analyst shall prepare a report which shall include:

(1) A description of building characteristics and energy data including:

(i) The results of the energy audit of the building;

(ii) The operation characteristics of energy-using systems; and

(iii) The estimated remaining useful life of the building;

(2) An analysis of the estimated energy consumption of the building, by fuel type in total Btu's and Btu/sq.ft./yr., using conversion factors prescribed by the State in the State Plan, at optimum efficiency (assuming implementation of all energy conservation maintenance and operating procedures);

(3) A description and analysis of all identified operating and maintenance procedures changes, if any, and energy conservation measures selected in accordance with the State Plan, including renewable resource measures, setting forth:

(i) A description of each operating and maintenance procedure change and an estimate of the costs of adopting such operating and maintenance procedure changes;

(ii) An estimate of the cost of design, acquisition and installation of each energy conservation measure, discussing pertinent assumptions as necessary;

(iii) Estimated useful life of each energy conservation measure;

(iv) An estimate of any significant increases or decreases in maintenance and operating costs that would result from each conservation measure, if relevant to the cost effectiveness test applicable under this part;

(v) An estimate of any significant salvage value or disposal cost of each energy conservation measure at the end of its useful life, if relevant to the cost effectiveness test applicable under this part;

(vi) An estimate supported by all data and assumptions used in arriving at the estimate, of the annual energy and energy cost savings (using current energy prices including demand charges) expected from each operating and maintenance procedure change and the acquisition and installation of each energy conservation measure. In calculating the potential energy cost savings or energy savings of each energy conservation measure, including renewable resource measures, the technical assistance analyst shall:

(A) Assume that all energy savings obtained from energy conservation maintenance and operating procedures have been realized;

(B) Calculate the total energy and energy cost savings, by fuel type, expected to result from the acquisition and installation of the energy conservation measures, taking into account the interaction among the various measures;

(C) Calculate that portion of the total energy and energy cost savings, as determined in paragraph (d)(3)(vi)(B) of this section, attributable to each individual energy conservation measure; and

(D) Consider climate and other variables;

(vii) An analysis of the cost effectiveness of each energy conservation measure consistent with § 455.63 of this part;

(viii) The estimated cost of the measure, which shall be the total cost for design and other professional service (excluding the cost of a technical assistance program), if any, and acquisition and installation costs. At the request of the applicant, or if required by the State in its State Plan, the

technical assistance report shall provide a life cycle cost analysis, which considers all costs and cost savings, such as maintenance costs and/or savings, resulting from an energy conservation measure for use by the institution;

(ix) The simple payback period of each energy conservation measure, calculated pursuant to § 455.63(a);

(4) Energy use and cost data, actual or estimated, for each fuel type used for the prior 12-month period, by month, if possible;

(5) Documentation of demand charges paid by the institution for the prior 12-month period, by month if possible, when demand charges are included in current energy prices or when the technical assistance report recommends an energy conservation measure that shifts energy usage to periods of lower demand and cost; and

(6) A signed and dated certification that the technical assistance program has been conducted in accordance with the requirements of this section and that the data presented is accurate to the best of the technical assistance analyst's knowledge.

§ 455.63 Cost effectiveness testing.

(a) This paragraph applies to calculation of the simple payback period of any energy conservation measure. The simple payback period of each energy conservation measure shall be calculated, taking into account the interactions among the various measures, by dividing the estimated total cost of the measure, as determined pursuant to § 455.62(d)(3)(ii), by the estimated annual energy cost savings accruing from the measure (adjusted for demand charges), as determined pursuant to § 455.62(d)(3)(vi).

(b) This paragraph applies, in addition to paragraph (a) of this section, if the State plan requires the cost effectiveness of an energy conservation measure to be determined by life cycle cost analysis of if the applicant requests such an analysis.

(1) A life cycle cost analysis, showing a savings-to-investment ratio greater than or equal to one over the useful life of the energy conservation measure (at least two years), shall be conducted in accordance with subpart A of 10 CFR Part 436 except that a State in its State Plan:

(i) may select a reasonable discount rate higher than the discount rate annually provided by DOE; and

(ii) may provide that the DOE energy cost escalation rates do not apply.

(2) The resulting savings-to-investment ratio shall be used for the purpose of ranking applications.

Subpart F—Energy Conservation Measures for Schools and Hospitals

§ 455.70 Purpose.

This subpart sets forth the eligibility criteria for schools and hospitals to receive grants for energy conservation measures, including renewable resource measures, and the elements of an energy conservation measure program.

§ 455.71 Eligibility.

(a) To be eligible to receive financial assistance for an energy conservation measure, including renewable resource measures, an applicant must:

(1) Be a school, hospital, or coordinating agency representing them as defined in § 455.2;

(2) Be located in a State which has an approved State Plan as described in subpart B of this part;

(3) Have completed a technical assistance program or its equivalent, as determined by the State in accordance with the State Plan, for the building for which financial assistance is to be requested, subsequent to the most recent construction, reconfiguration, or utilization change to the building which significantly modified energy use within the building;

(4) Have completed an updated technical assistance program if required in the State Plan as specified in § 455.20(q);

(5) Have implemented all energy conservation maintenance and operating procedures which are identified as the result of a technical assistance program, or have provided a satisfactory written justification for not implementing any specific maintenance and operating procedures so identified;

(6) Have no plan or intention at the time of application to close or otherwise dispose of the building for which financial assistance is to be requested within the simple payback period or useful life (depending on the State's requirement for determining cost effectiveness) of any energy conservation measure recommended for that building; and

(7) Submit an application in accordance with the provisions of this part and the approved State Plan;

(b) To be eligible for financial assistance:

(1) In States where simple payback has been selected as the cost-effectiveness test pursuant to § 455.20(u)(2), the simple payback period of each energy conservation measure for which financial assistance is requested shall not be less than two years nor greater than 10 years, and the estimated useful life of the measure shall be greater than its simple payback period; or

(2) In States where life cycle costing has been selected as the cost-effectiveness test pursuant to § 455.20(u)(2), the savings-to-investment ratio of each energy conservation measure must be greater than or equal to one under § 455.62(b), the life cycle cost payback cannot exceed 15 years, and the useful life of the energy conservation measure must be at least two years.

(c) Leased equipment is not eligible for financial assistance under this part.

§ 455.72 Scope of the grant.

Except for design costs funded under Subpart E of this part, financial assistance awarded under this subpart may be expended for the design, acquisition and installation of energy conversion measures to reduce energy consumption or measures to allow the use of renewable resources for schools and hospitals or to shift energy usage to periods of low demand and cost. Such measures include, but are not necessarily limited to, those included in the definition of energy conservation measure in § 455.2.

Subpart G—State Administrative Expenses

§ 455.80 Purpose.

This subpart describes what constitutes a State administrative expense that may receive financial assistance under this part and sets forth the eligibility criteria for States to receive grants for administrative expenses.

§ 455.81 Eligibility.

To be eligible to receive financial assistance for administrative expenses, a State must:

(a) Have in place a State Plan approved by DOE pursuant to § 455.21; and

(b) Be operating a program to provide technical assistance and energy conservation measure grants, or technical assistance, program assistance, and marketing (where energy conservation measures are funded non-Federally) to eligible institutions pursuant to this part.

§ 455.82 Scope of the grant.

A State's administrative expenses shall be limited to those directly related to administration of technical assistance programs, program assistance and marketing programs, and energy conservation measures, including costs associated with:

(a) Personnel whose time is expended directly in support of such administration;

(b) Supplies and services expended directly in support of such administration;

(c) Equipment purchased or acquired solely for and utilized directly in support of such administration, subject to 10 CFR 600.436;

(d) Printing, directly in support of such administration; and

(e) Travel, directly related to such administration.

Subpart H—State Grants for Technical Assistance, Program Assistance, and Marketing.

§ 455.90 Purpose.

This subpart describes what constitutes a State program for technical assistance, program assistance, and marketing that may receive financial assistance under this part and sets forth the eligibility criteria for States to receive grants for technical assistance, program assistance, and marketing.

§ 455.91 Eligibility.

To be eligible to receive financial assistance for technical assistance, program assistance, and marketing, a State must:

(a) Have in place a State Plan approved by DOE which includes a description of the State's program or programs to provide technical assistance, program assistance, and marketing, pursuant to § 455.20(j)(1);

(b) Have established a program consistent with this part to fund, from non-Federal sources, energy conservation measures for eligible institutions; and

(c) Provide to DOE a certification pursuant to § 455.122.

§ 455.92 State technical assistance awards.

Technical assistance awards by States under this subpart are subject to all requirements of this part which apply to DOE-awarded technical assistance program grants except that States:

(a) Are not required to award the funds in grant instruments;

(b) May award the funds throughout the fiscal year subject to § 455.143(a)(3); and

(c) Are not required to rank applications under § 455.131(b) of this part.

Subpart I—Cost Sharing

§ 455.100 Limits to Federal share.

Amounts made available under this part, together with any other amounts made available from other Federal sources, may not be used to pay more than 50 percent of the costs of technical assistance programs and energy conservation measures unless the grantee qualifies for the exceptions specified in §§ 455.141(a), 455.142(a), 455.142(b), or for severe hardship assistance specified in § 455.142(d). In cases of severe hardship, the Federal share of the cost cannot exceed 90 percent.

§ 455.101 Borrowing the non-Federal share/title to equipment.

The non-Federal share of the costs of acquiring and installing energy conservation measures may be provided by using financing or other forms of borrowed funds, such as those provided by loans and performance contracts, even if such financing does not provide for the grantee to receive clear title to the equipment being financed until after the grant is closed out. However, grantees in such cases must otherwise meet all the requirements of this part, and financing and loan agreements and performance contracts under this section are subject to the requirements of 10 CFR part 600 and the certification requirements under § 455.111(e). Grantees must receive clear title to the equipment when the loan is paid off.

§ 455.102 Energy conservation measure cost-share credit.

To the extent a State provides in its State Plan, DOE may wholly or partially credit the costs of the following, with respect to a building, toward the required cost-share for an energy conservation measure grant in that building:

(a) A non-Federally funded technical assistance program dated no earlier than three years prior to the date of the grant application;

(b) A non-Federally funded technical assistance program update to comply with § 455.20(q); and

(c) The non-Federally funded implementation of one or more energy conservation measures, which complies with § 455.71, commenced within the three years prior to the grant application.

§ 455.103 Requirements for applications for credit.

(a) If a State has provided for credit in its State Plan, applications for credit will be considered only when the projects for which credit is sought meet the applicable program requirements, including the eligibility requirements specified in § 455.71 and the relevant sections of 10 CFR part 600.

(b) Credit for energy conservation measures will be considered only when supported by a technical assistance analysis performed prior to the installation of the energy conservation measures.

§ 455.104 Rebates from utilities and other entities.

(a) Grantees which receive rebates or other monetary considerations from utilities or other entities for installing the energy conservation measures funded by a grant under this part may use such funds to meet their cost sharing obligations pursuant to § 455.100.

(b) Grantees are not required to deduct the amount of the rebate or monetary consideration from the cost of the measures applied for in a grant application, and DOE does not consider such rebates or monetary considerations to be program income which would have to be remitted to DOE upon receipt by the grantee.

Subpart J—Application Responsibilities—Grants to Institutions

§ 455.110 Grant application submittals for technical assistance and energy conservation measures.

(a) Each eligible applicant desiring to receive financial assistance shall file an application in accordance with the provisions of this subpart and the approved State Plan of the State in which such building is located. The application, which may be amended in accordance with applicable State procedures at any time prior to the State's final determination thereon, shall be filed with the State energy agency designated in the State Plan.

(b) Applications from schools, hospitals, units of local government, public care institutions, and coordinating agencies for financial assistance for technical assistance programs shall include the certifications contained in § 455.111 and:

(1) The applicant's name and mailing address;

(2) The energy audit required by the State pursuant to § 455.20(k) as the basis for technical assistance program grants, for each building for which financial assistance is requested;

(3) A project budget, by building, which stipulates the intended use of all Federal and non-Federal funds, including in-kind contributions (valued in accordance with the guidelines in 10 CFR part 600), to be used to meet the cost-sharing requirements described in subpart I of this part;

(4) A brief description, by building, of the proposed technical assistance program, including a schedule, with appropriate milestone dates, for

completing the technical assistance program;

(5) Additional information required by the applicable State Plan, and any other information which the applicant desires to have considered, such as information to support an application from a school or hospital for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship or an application which proposes the use of Federal funds, paid under and authorized by another Federal agreement, to meet cost sharing requirements.

(c) Applications from schools and hospitals and coordinating agencies for financial assistance for energy conservation measures, including renewable resource measures, shall include the certifications contained in § 455.111 and:

(1) The applicant's name and mailing address;

(2) A description of each building for which financial assistance is requested, sufficient to determine the building's eligibility, ownership, use, and size in gross square feet;

(3) A project budget, by measure or building, as provided in the State Plan, which stipulates the intended use of all Federal and non-Federal funds, and identifies the sources and amounts of non-Federal funds, including in-kind contributions (valued in accordance with the guidelines in 10 CFR part 600) to be used to meet the cost sharing requirements described in subpart I of this part;

(4) A schedule, including appropriate milestone dates, for the completion of the design, acquisition, and installation of the proposed energy conservation measures for each building;

(5) For each energy conservation measure proposed for funding, the projected cost, the projected simple payback period, and (if required by the State) the life cycle cost savings-to-investment ratio, as contained in § 455.63. Applications with more than one energy conservation measure per building shall include projected costs and paybacks, and (if required) the savings-to-investment ratios for each measure, and the average simple payback period or overall savings-to-investment ratio for all measures proposed for the building;

(6) Unless waived by DOE, the report of the technical assistance analyst. This report must have been completed since the most recent construction, reconfiguration, or utilization change to the building which significantly modified energy use, for each building;

(7) An update of the technical assistance program report if required by the State in its State Plan and as specified in § 455.20(q);

(8) If the applicant is aware of any adverse environmental impact which may arise from adoption of any energy conservation measure, an analysis of that impact and the applicant's plan to minimize or avoid such impact; and

(9) Additional information required by the applicable State Plan, and any additional information which the applicant desires to have considered, such as information to support an application for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship, or an application which proposes the use of Federal funds, paid under and authorized by another Federal agreement, to meet cost sharing requirements.

§ 455.111 Applicant certifications for technical assistance and energy conservation measure grants to institutions.

Applications for financial assistance for technical assistance programs and energy conservation measures, including renewable resource measures, shall include certification that the applicant:

(a) Is eligible under § 455.61 for technical assistance or § 455.71 for energy conservation measures;

(b) Has satisfied the requirements set forth in § 455.110;

(c) For applications for technical assistance, has implemented all energy conservation maintenance and operating procedures recommended in the energy audit required by the State as the basis for the technical assistance grant, pursuant to § 455.20(k), and for applications for energy conservation measures, those recommended in the report obtained under a technical assistance program. If any such procedure has not been implemented, the application shall contain a satisfactory written justification for not implementing that procedure;

(d) Will obtain from the technical assistance analyst, before the analyst performs any work in connection with a technical assistance program or energy conservation measure, a signed statement certifying that the technical assistance analyst has no conflicting financial interests and is otherwise qualified to perform the duties of technical assistance analyst in accordance with the standards and criteria established in the approved State Plan;

(e) When using borrowed funds for the non-Federal share of an energy conservation project where a lien is placed by the lender on equipment funded under the grant, will obtain a clause in the financing contract requiring lender notification with certified return receipt requested, to the applicable Support Office Director, of the filing of a lawsuit seeking a remedy for a default; and

(f) Will comply with all reporting requirements contained in § 455.113.

§ 455.112 Davis-Bacon wage rate requirement.

When an energy conservation measure or group of measures in a building, funded under this part, has a total estimated cost for acquisition and installation of more than $5,000, any construction contract or subcontract in excess of $2,000 using any grant funds awarded under this part must include:

(a) Those contract labor standards provisions set forth in 29 CFR 5.5; and

(b) A provision for payment of laborers and mechanics at the minimum wage rates determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a) as set forth in 29 CFR part 1.

§ 455.113 Grantee records and reports for technical assistance and energy conservation measure grants to institutions.

(a) Each unit of local government or public care institution which receives a grant for a technical assistance program, and each school, hospital, and coordinating agency which receives a grant for a technical assistance program or an energy conservation measure, including renewable resource measures, shall keep all the records required by § 455.4 in accordance with this part and the DOE Financial Assistance Rules.

(b) Each grantee shall submit reports as follows:

(1) For technical assistance programs, copies of a final report of the analysis completed on each building for which financial assistance was provided shall be submitted to DOE and to the State energy agency no later than 90 days following completion of the analysis. These reports shall contain:

(i) The report submitted to the institution by the technical assistance analyst, and

(ii) The institution's plan to implement energy conservation maintenance and operating procedures.

(2) For energy conservation measure projects:

(i) Semi-annual progress reports. Copies shall be submitted to DOE and to the State energy agency no later than the end of July (for the period January 1 through June 30), and January (for the period July 1 through December 31), and shall detail and discuss milestones accomplished, those not accomplished,

status of in-progress activities, and remedial actions if needed to achieve project objectives. A final report may be submitted in lieu of the last semi-annual report if it satisfies the semi-annual progress report and final report designated time frames;

(ii) A final report. Copies shall be submitted to DOE and to the State energy agency within 90 days of the completion of the project and shall list and describe the energy conservation measures acquired and installed, contain a final actual cost and a final estimated simple payback period for each measure and the project as a whole, or a final savings to investment ratio for each measure and the project as a whole (depending on the State requirement), and include a statement that the completed energy conservation measures conform to the approved grant application.

(iii) If the grantee has been selected by the State as part of its statistically valid sample of grantees, annual energy use reports which will reflect the grantee's actual post-retrofit energy use experiences for 3 years after project completion. Copies of these reports shall be submitted to DOE and to the State energy agency within 60 days after the end of each 12-month period covered in the reports, and shall identify each building and provide data on energy use for that building for the relevant 12-month period. To the extent feasible, energy consumption data in each annual report should be the monthly usage data by fuel or energy type, and the reports should include brief descriptions of any changes in building usage, equipment, or structure occurring during the reporting period.

(3) Such other information as DOE may from time to time request.

(4) Each copy of any technical assistance or energy conservation measure report shall be accompanied by a financial status report completed in accordance with the documents listed in § 455.3.

Subpart K—Applicant Responsibilities—Grants to States

§ 455.120 Grant applications for State administrative expenses.

(a) Each State desiring to receive grants to help defray State administrative expenses shall file an application in accordance with the provisions of this section. The maximum amount a State may apply for is $50,000 or 5 percent of its schools and hospitals grant awards, whichever is greater. At any time after notice by DOE of the amounts allocated to each State for a grant program cycle, each State may apply to DOE for an amount for administrative expenses not exceeding $50,000. In addition, each State, after it makes its submittal to DOE required under § 455.133, may apply for a further grant not exceeding 5 percent of the total of all grant awards for technical assistance and energy conservation measures within the State, less than $50,000 if that was previously awarded the State for administrative expenses in the same grant program cycle.

(b) States that are eligible and elect to apply for grants for technical assistance, program assistance, or marketing pursuant to § 455.121 may initially apply to DOE for $50,000 for administrative expenses. Once a State has determined the amount of non-Federal funds that have been legally obligated to schools and hospitals for eligible energy conservation measures during the fiscal year, it may subsequently apply for a further grant, not exceeding 5 percent of the total amount (less $50,000, if that was previously awarded to the State for administrative expenses in the same fiscal year) legally obligated to eligible recipients in the State during the fiscal year for technical assistance, program assistance, and marketing, and for energy conservation measures which are funded with non-Federal funds but which meet the certification and other requirements of this part for such energy conservation measures. The aggregate amount applied for to cover State administrative expenses, technical assistance, program assistance, and marketing cannot exceed the State's allocation for the fiscal year.

(c) In the event that a State cannot, or decides not to use the amount available to it for an administrative grant under this section for administrative purposes, these funds may, at the discretion of the State, be used for technical assistance and energy conservation measure grants to eligible institutions within the State, in accordance with this part.

(d) Applications for financial assistance to defray State administrative expenses shall include:

(1) The name and address of the person designated by the State to be responsible for the State's functions under this part;

(2) An identification of intended use of all Federal and non-Federal funds to be used for the State administrative expenses listed in § 455.82; and

(3) Any other information required by DOE.

§ 455.121 Grant applications for State technical assistance, program assistance, and marketing programs.

(a) A State may apply for up to 100 percent of the amount allocated to it for a grant program cycle to fund administrative expenses under § 455.120 and technical assistance and program assistance programs, or for up to 50 percent of the amount allocated to it for a grant program cycle to fund marketing programs provided that:

(1) The State has established a program to fund technical assistance, program assistance, or marketing programs, and has described its program or programs in its State Plan, as specified in § 455.20(j);

(2) The State has a program or programs established consistent with this part that fund, from non-Federal sources, energy conservation measures eligible under this part;

(3) Not more than 15 percent of the aggregate amount of Federal and non-Federal funds legally obligated to eligible recipients in the State to provide program assistance, marketing and technical assistance programs, implement energy conservation measures consistent with this part, and otherwise carry out a program pursuant to this part for the fiscal year concerned are expended for program assistance, technical assistance and marketing costs for such program;

(4) The energy conservation measures funded from non-Federal sources under this section would be eligible for funding under § 445.71; and

(5) The institutions undertaking the non-Federally funded energy conservation measures do so in accordance with all applicable Federal, State and local laws and regulations, with particular attention paid to applicable State and Federal non-discrimination laws and regulations.

(b) Applications for financial assistance to defray State technical assistance, program assistance, or marketing expenses shall include:

(1) The name and address of the person designated by the State to be responsible for the State's functions under this part;

(2) An identification of intended use of all Federal and non-Federal funds, for the State administrative expenses listed in § 455.82, or the technical assistance, program assistance, or marketing programs pursuant to this section;

(3) Descriptions of the activities to be implemented, together with a description of the State's program to provide non-Federal sources of funding to carry out the State's program(s) for energy conservation measures consistent with this part;

(4) A certification that the 15 percent limit specified in subparagraph (a)(3) of this section will not be exceeded; and

(5) Any other information required by DOE.

§ 455.122 Applicant certifications for State grants for technical assistance, program assistance, and marketing.

Applications from States for financial assistance for technical assistance programs, program assistance, and marketing shall include certifications that the State:

(a) Has established a program or programs to fund, from non-Federal sources, energy conservation measures for eligible buildings consistent with this part;

(b) Will not expend, for technical assistance, program assistance, and marketing, more than 15 percent of the aggregate amount of Federal and non-Federal funds legally obligated to eligible recipients in the State to provide technical assistance, program assistance, marketing programs, implement energy conservation measures consistent with this part, and otherwise carry out a program pursuant to this part for the fiscal year concerned; and

(c) Has provided for regular DOE-funded grants to religiously affiliated eligible institutions if the State has a State constitutional prohibition on providing State assistance to such institutions and if such institutions would be ineligible to apply for the non-Federally funded conservation measures or State-funded technical assistance.

§ 455.123 Grantee records and reports for State grants for administrative expenses, technical assistance, program assistance, and marketing.

(a) Each State which receives a grant for administrative expenses, technical assistance programs, program assistance, or marketing shall keep all the records required by § 455.4 in accordance with this part and the DOE Financial Assistance Rules.

(b) Each State shall submit a semi-annual program performance report to DOE by the close of each February and August, including, but not limited to:

(1) A discussion of administrative activities pursuant to § 455.82, and a discussion of milestones accomplished, those not accomplished, status of in-progress activities, problems encountered, and remedial actions, if any, planned pursuant to § 455.135(f);

(2) A discussion of technical assistance, program assistance, and/or marketing programs pursuant to § 455.144(a) and § 455.144(b), if the State has received a grant to fund such activities, including a discussion of the results of the State's program to non-Federally fund energy conservation measures consistent with this part pursuant to § 455.144(c), with a list of institutions receiving assistance for technical assistance programs and a list of institutions which obtained energy conservation measures using non-Federal funds, including the name and address of each institution, the amount and type of funding provided to each, and, for energy conservation measures, the types of measures funded in each institution;

(3) A summary of grantee reports received by the State during the report period pursuant to §§ 455.113 (b)(1) and (b)(2);

(4) For the report due to be submitted to DOE by the close of each August, an estimate of annual energy use reductions in the State, by energy source, attributable to implementation of energy conservation maintenance and operating procedures and installation of energy conservation measures under this part. Such estimates shall be based upon a sampling of institutions participating in the technical assistance phase of this program and upon the energy use reports submitted to the State pursuant to § 455.113(b)(2)(iii); and

(5) Such other information as DOE may from time to time request.

(c) Each copy of any report covering State administrative, technical assistance, program assistance, or marketing expenses shall be accompanied by a financial status report completed in accordance with the documents listed in § 455.3. In addition, States shall file quarterly financial status reports for the quarters which occur between the semi-annual report periods covered in their program performance reports. These quarterly reports are due within 30 days following the end of the applicable quarters.

Subpart L—State Responsibilities

§ 455.130 State evaluation of grant applications.

(a) If an application received by a State is reviewed and evaluated by that State and determined to be in compliance with subparts E, F, and J of this part, § 455.130(b), any additional requirements of the approved State Plan, State environmental laws, and other applicable laws and regulations, then such application will be eligible for financial assistance.

(b) Concurrent with its evaluation and ranking of grant applications pursuant to § 455.131, the State will forward applications for technical assistance or for energy conservation measures for a school to the State school facilities agency for review and certification that each school application is consistent with related State programs for educational facilities. For hospitals the certification requirement applies only if there is a State requirement for it, in which case the procedure should be described in the State Plan.

§ 455.131 State ranking of grant applications.

(a) Except as provided by § 455.92, all eligible applications received by the State will be ranked by the State in accordance with its approved State Plan.

(b) For technical assistance programs, buildings shall be ranked in descending priority based upon the energy conservation potential, on a percentage basis, of the building as determined in the energy audit in accordance with the procedures established in the State Plan pursuant to § 455.20(e). Each State shall develop separate rankings for all buildings covered by eligible applications for:

(1) Technical assistance programs for units of local government and public care institutions; and

(2) Technical assistance programs for schools and hospitals.

(c) All eligible applications for energy conservation measures received will be ranked by the State on an individual building-by-building or a measure-by-measure basis. If a State ranks on a building-by-building basis, several buildings may be ranked as a single building if the application proposes a single energy conservation measure which is physically connected to all of the buildings. If a State ranks on a measure-by-measure basis, a measure that is physically connected to a number of buildings may be ranked as a single measure. Buildings or measures shall be ranked in accordance with the procedures established by the State Plan, on the basis of the information developed during a technical assistance program (or its equivalent) for the building and the criteria for ranking applications. The criterion set forth in paragraph (1) of this section shall receive at least 50 percent of the weight given to the criteria used to rank applications. Each State may assign weights to the other criteria as set forth in the State Plan pursuant to § 455.20(e). The criteria for ranking applications are:

(1) Simple payback or a life cycle cost analysis, calculated in accordance with § 455.63;

(2) The types and quantities of energy to be saved, including oil, natural gas, or electricity, in a priority as established in the approved State Plan;

(3) The types of energy sources to which conversion is proposed, including renewable energy;

(4) The quality of the technical assistance program report; and

(5) Other factors as determined by the State.

(d) A State is exempt from the ranking requirements of this section when:

(1) The total amount requested by all applications for schools and hospitals for technical assistance and energy conservation measures in a given grant program cycle for grants up to 50 percent is less than or equal to the funds available to the State for such grants and the total amount recommended for hardship funding is less than or equal to the amounts available to the State for such grants.

(2) The total amount requested by all applications for buildings owned by units of local government and public care institutions in a given grant program cycle is less than or equal to the total amount allocated to the State for technical assistance program grants in the State.

(e) If a State elects to permit applications for credit pursuant to § 455.102, such applications for completed or partially completed energy conservation measures shall reflect both the work done and the work to be done, and will be reviewed and ranked on the basis of the cost of all of the measures in the project. The credit shall not exceed the non-Federal share of the proposed additional energy conservation measures.

(f) Within the rankings of school and hospital buildings for technical assistance and energy conservation measures, including renewable resource measures, to the extent that approvable applications are submitted, a State shall initially assure that:

(1) Schools receive at least 30 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle; and

(2) Hospitals receive at least 30 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle.

(g) If there are insufficient applications from schools or hospitals to cover the respective 30 percent requirements specified in paragraph (f) of this section, then the State may recommend use of the remaining funds in those allocations for other qualified applicants.

§ 455.132 State evaluation of requests for severe hardship assistance.

(a) To the extent provided in § 455.30(d), financial assistance will be initially available for schools and hospitals experiencing severe hardship based upon an applicant's inability to provide the 50 percent non-Federal share. This financial assistance will be available only to the extent necessary to enable such institutions to participate in the program.

(b) The State shall recommend funds for severe hardship applications wholly or partially from the funds reserved in accordance with § 455.30(d) and as stated in an approved State Plan.

(c) Applications for Federal funding in excess of 50 percent based on claims of severe hardship shall be given an additional evaluation by the State to assess on a quantifiable basis, to the maximum extent practicable, the relative need among eligible institutions. The minimum amount of additional Federal funding necessary for the applicant to participate in the program will be determined by the State in accordance with the procedures established in the State Plan. The primary consideration shall be the institution's inability to provide the 50 percent share of the project cost. Secondary criteria such as climate, fuel cost and fuel availability, borrowing capacity, median family income in the area, and other relevant factors as determined by the State may be addressed in the State Plan, as specified in § 455.20(g).

(d) A State shall indicate, for those schools and hospitals with the highest rankings, determined pursuant to § 455.131 (a) and (b):

(1) The amount of additional hardship funding requested by each eligible applicant for each building determined to be in a class of severe hardship; and

(2) The amount of hardship funding recommended by the State based upon relative need, as determined in accordance with the State Plan, to the limit of the hardship funds available. The State must decide on a case-by-case basis whether, and to what extent, it will recommend hardship funding.

(e) If there are insufficient applications from hardship applicants to cover the 10 percent allocation provided for in § 455.30(d), then the State may recommend use of the remaining funds for other qualified applicants. The total amount recommended for hardship grants cannot exceed the 10 percent limit.

§ 455.133 Forwarding of institutional applications for technical assistance and energy conservation measure grants.

(a) Except as provided by § 455.92, each State shall forward all applications recommended for funding within its allocation to DOE once each grant program cycle, along with a listing of buildings or measures covered by eligible applications for schools, hospitals, units of local government, and public care institutions, ranked by the State if necessary pursuant to the provisions of § 455.131. If ranking has been employed, the list shall include the standings of buildings or measures.

(1) Measure-by-measure rankings will be recombined for the respective buildings with more than one recommended measure.

(2) Buildings will be consolidated under one grantee application.

(b) The State shall indicate the amount of financial assistance requested by the applicant for each eligible building and, for those buildings recommended for funding within the limits of the State's allocation, the amount recommended for funding. If the amount recommended is less than the amount requested by the applicant, the list shall also indicate the reason for that recommendation.

(c) The State shall indicate that it has reviewed and evaluated all of the submitted applications and that those applications meet the relevant requirements of the program, and shall certify that applications submitted are eligible pursuant to § 455.130(a).

§ 455.134 Forwarding of applications for State grants for technical assistance, program assistance, and marketing.

A State eligible to apply for a grant for technical assistance, program assistance, or marketing, as described in § 455.121, may submit such an application to DOE any time after the allocations have been announced, in conjunction with or in lieu of an application for State administrative expenses.

§ 455.135 State liaison, monitoring, and reporting.

Each State shall be responsible for:

(a) consulting with eligible institutions and coordinating agencies representing such institutions in the development of its State Plan;

(b) Notifying eligible institutions and coordinating agencies of the content of the approved State Plan and any amendment to a State Plan;

(c) Notifying each applicant how the applicant's building or measure ranked among other applications, and whether and to what extent its application will be recommended for funding or, if not to be recommended for funding, the specific reasons(s) therefor;

(d) Certifying that each institution has given its assurance that it is willing and able to participate on the basis of any changes in amounts recommended for that institution in the State ranking pursuant to § 455.131;

(e) Reporting requirements pursuant to § 455.113; and

(f) Direct program oversight and monitoring of the activities for which grants are awarded as defined in the State Plan. States shall immediately notify DOE of any noncompliance or indication thereof.

Subpart M—Grant Awards

§ 455.140 Approval of institutional applications for technical assistance and energy conservation measures.

(a) DOE shall review and approve applications submitted by a State in accordance with §455.133 if DOE determines that the applications meet the objectives of the Act, and comply with the applicable State Plan and the requirements of this part. DOE may disapprove all or any portion of an application to the extent funds are not available to carry out a program or measure (or portion thereof) contained in the application, or for such other reason as DOE may deem appropriate.

(b) DOE shall notify a State and the applicant of the final approval or disapproval of an application at the earliest practicable date after DOE's receipt of the application, and, in the event of disapproval, shall include a statement of the reasons therefor.

(c) An application which has been disapproved for reasons other than lack of funds may be amended to correct the cause of its disapproval and resubmitted in the same manner as the original application at any time within the same grant program cycle. Such an application will be considered to the extent funds have not already been designated for institutions by the ranking process at the time of resubmittal. However, nothing in this provision shall obligate either the State or DOE to take final action regarding a resubmitted application within the grant program cycle. An application not acted upon may be resubmitted in a subsequent grant program cycle.

(d) DOE shall not provide supplemental funds to cover cost overruns or other additional costs beyond those provided for in the original grant award for technical assistance projects and shall fund only one technical assistance project per building.

(e) DOE shall not provide supplemental funds to cover cost overruns or other additional costs beyond those provided for in the original grant award for all energy conservation measures funded under a grant in a given grant program cycle.

(f) States shall specify in their State Plans the circumstances under which a measure which was included in a grant but which was not implemented and for which no funds were expended may be reapplied for in a subsequent application.

(g) An institution may apply for, and DOE may make, grant awards in another grant program cycle for additional energy conservation measures which relate to a building which previously received grants for other energy conservation measures.

(h) Funds which become available to a grantee after the installation of all approved measures, due to cost underruns in the installed measures, may be used by the grantee for additional measures if such measures are approved in writing by the State and DOE.

(i) DOE may fund costs incurred by an institution for technical assistance and energy conservation measure projects after the date of the grant application, so long as that date is no earlier than the close of the preceding grant program cycle. Such costs may be funded when, in the judgment of DOE, the institution has complied with program requirements and the costs incurred are allowable under applicable cost principles and the approved project budget. The applicant bears the responsibility for the entire project cost unless the application is approved by DOE in accordance with this part.

(j) In addition to the prior approval requirements for project changes as specified in the DOE Financial Assistance Rules (10 CFR part 600), a grantee shall request prior written approval from DOE before:

(1) Transferring DOE or matching amounts between buildings included in an approved application when the State ranks applications on a building-by-building basis; or

(2) Transferring DOE or matching amounts between energy conservation measures included in an approved application when the State ranks on a measure-by-measure basis.

§ 455.141 Grant awards for units of local government and public care institutions.

(a) DOE may make grants to units of local government, public care insitutions, and coordinating agencies representing them for up to 50 percent of the costs of performing technical assistance programs for buildings covered by an application approved in accordance with § 455.140, except that in the case of units of local government and public care institutions a majority of whose operating and capital funds are provided by the government of the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, a grant may be made for up to 100 percent of such costs.

(b) Total grant awards within any State to units of local government and public care institutions are limited to funds allocated to each State in accordance with § 455.30.

(c) Units of local government and public care institutions are not eligible for financial assistance for severe hardship.

§ 455.142 Grant awards for schools, hospitals, and coordinating agencies.

(a) DOE may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the costs of performing technical assistance programs for buildings covered by an application approved in accordance with § 455.140; except that in the case of schools and hospitals a majority of whose operating and capital funds are provided by the government of the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands a grant may be made for up to 100 percent of such costs. Grant awards for technical assistance programs in any State within any grant program cycle shall be limited to a portion of the total allocation as specified in § 455.30(b)(1).

(b) DOE may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the costs of acquiring and installing energy conservation measures, including renewable resource measures, for buildings covered by an application approved in accordance with § 455.140, except that in the case of schools and hospitals a majority of whose operating and capital funds are provided by the government of the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, a grant may be made for up to 100 percent of such costs.

(c) DOE may award up to 10 percent of the total amount allocated to a State for schools and hospitals in a case of severe hardship, ascertained by the State in accordance with the State Plan, for buildings recommended and in amounts determined by the State pursuant to § 455.132(e).

§ 455.143 Grant awards for State administrative expenses.

(a) For the purpose of defraying State expenses in the administration of technical assistance programs in accordance with subpart E and energy conservation measures in accordance with subpart F, or energy conservation measures non-Federally funded pursuant to § 455.121, DOE may make grant awards to a State:

(1) Immediately following public notice of the amounts allocated to a State for the grant program cycle, and upon approval of the application for administrative costs, in an amount not exceeding $50,000;

(2) Concurrent with grant awards for approved applications for technical assistance or energy conservation measures for institutions in that State, and upon approval of an application for administrative costs, in an amount not exceeding the difference between the amount granted pursuant to paragraph (a)(1) of this section and 5 percent of the total amount of grants awarded within the State for technical assistance programs and energy conservation measures in the applicable grant program cycle; or

(3) Upon receipt by DOE of documentation from the State demonstrating that sufficient non-Federal funding has been legally obligated to schools and hospitals for energy conservation measures pursuant to § 455.121(a) and § 455.123(b)(ii), and upon approval of an application for administrative costs, in an amount not exceeding the difference between the amount granted pursuant to paragraph (a)(1) of this section and 5 percent of the aggregate Federal and non-Federal funds legally obligated to eligible recipients in the State to provide technical assistance, program assistance, and marketing programs and implement energy conservation measures consistent with this part, for the fiscal year concerned.

(b) Grants for such purposes may be made for up to 100 percent of the projected administrative expenses, not to exceed the State's allocation or the $50,000 or 5 percent limit, as approved by DOE.

(c) The total of all grants for State administrative costs, technical assistance programs, and energy conservation measures (or for State administrative costs, technical assistance, program assistance, and marketing, if the State elects and is eligible to apply for such grants) in that State shall not exceed the total amount allocated for that State for any grant program cycle.

(d) In the event that a State cannot, or decides not to use the amount available to it for an administrative grant under this section for administrative purposes, these funds may, at the discretion of the State, be used for technical assistance and energy conservation grants to eligible institutions within that State in accordance with this part.

§ 455.144 Grant awards for State programs to provide technical assistance, program assistance, and marketing.

(a) For the purpose of defraying State expenses in the administration of special programs to provide technical assistance and program assistance pursuant to § 455.121, DOE may make a grant award to a State for up to 100 percent of the funds allocated to the State for the grant program cycle, provided that the State meets the requirements described in § 455.121(b). In addition:

(1) Funds for individual technical assistance programs provided by the State pursuant to this section shall not exceed 50 percent of the cost of the technical assistance program;

(2) Grants for program assistance may be made for up to 100 percent of a State's projected program assistance expenses; and

(3) Grants for State technical assistance, and program assistance programs may be awarded by DOE upon approval of an application from the State.

(b) For the purpose of defraying State expenses in the administration of a marketing program pursuant to § 455.121, DOE may make a grant award to a State for up to 50 percent of the funds allocated to the State for the grant program cycle, provided that the State meets the requirements described in § 455.121(b). In addition:

(1) Grants for marketing may be made for up to 100 percent of a State's projected marketing expenses; and

(2) Such grants may be awarded by DOE upon approval of an application from the State.

(c) If a State provides a certification under § 455.121(b) and is unable to document that the required non-Federal funding levels for energy conservation measures were achieved substantially for the previous fiscal year for which a similar certification was submitted, DOE may deny the application, accept it after the percent of allocated funds is reduced in light of past performance, or take other appropriate action.

(d) In the event that a State, after receiving a grant under this section, cannot, or decides not to use all or part of the amount available to it for technical assistance, program assistance, and marketing, these funds may, at the discretion of the State, and after appropriate application to, and approval of DOE, be used for technical assistance and energy conservation grants to eligible institutions within that State in accordance with this part.

Subpart N—Administrative Review

§ 455.150 Right to administrative review.

(a) A State shall have a right to file a notice requesting administrative review of a decision under § 455.143 by a Support Office Director to disapprove an application for a grant award for State administrative expenses subject to special conditions or a decision under § 455.21 of this part by a Support Office Director to disapprove a State Plan or an amendment to a State Plan.

(b) A State shall have a right to file a notice requesting administrative review of a decision under § 455.144 by a Support Office Director to disapprove an application for a grant award for State technical assistance, program assistance, or marketing programs.

(c) A school, hospital, coordinating agency, or State acting as an institution's duly authorized agent shall have a right to file a notice requesting administrative review of a decision under § 455.142 by a Support Office Director to disapprove an application for a grant award to perform technical assistance programs or to acquire and install an energy conservation measure if the disapproval is based on a determination that:

(1) The applicant is ineligible, under § 455.61 or § 455.71 or for any other reason; or

(2) A technical assistance program equivalent performed without the use of Federal funds does not comply with the requirements of § 455.62 for purposes of satisfying the eligibility requirements of § 455.71(a)(3).

§ 455.151 Notice requesting administrative review.

(a) Any applicant shall have 20 days from the date of receipt of a decision subject to administrative review under § 455.150 to disapprove its application for a grant award to file a notice requesting administrative review. If an applicant does not timely file such a notice, the decision to disapprove shall become final for DOE.

(b) A notice requesting administrative review shall be filed with the Support Office Director and shall be accompanied by a written statement containing supporting arguments.

(c) If the applicant is a State appealing pursuant to paragraph (a) § 455.150, the State shall have the right to a public hearing. To exercise that right, the State must request such a hearing in the notice filed under paragraph (b) of this section. A public hearing under this section shall be informal and legislative in nature.

(d) A Notice or any other document shall be deemed filed under this subpart upon receipt.

§ 455.152 Transmittal of record on review.

On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the Support Office Director shall forward to the Deputy Assistant Secretary the notice requesting administrative review, the decision to disapprove as to which administrative review is sought, a draft recommended final decision for concurrence, and any other relevant material.

§ 455.153 Review by the Deputy Assistant Secretary.

(a) If a State requests a public hearing pursuant to paragraph (a) of § 455.150, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and **Federal Register** notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing under this section shall be informal and legislative in nature.

(b) The Deputy Assistant Secretary shall concur in, concur in as modified, or issue a substitute for the recommended decision of the Support Office Director:

(1) With respect to a notice filed pursuant to paragraph (a) of § 455.150, on or before 60 days from receipt of documents under § 455.152 or the conclusion of a public hearing, whichever is later; or

(2) With respect to a notice filed pursuant to paragraph (b) of § 455.150, on or before 30 days from receipt of documents under § 455.152.

§ 455.154 Discretionary review by the Assistant Secretary.

On or before 15 days from the date of the determination under § 455.153(b), the applicant for a grant award may file an application, with a supporting statement of reasons, for discretionary review by the Assistant Secretary. If administrative review is sought pursuant to paragraph (a) of § 455.150, the Assistant Secretary shall send a notice granting or denying discretionary review within 15 days and upon granting such review, shall issue a decision no later than 60 days from the date discretionary review is granted. If administrative review is sought pursuant to paragraph (b) of § 455.150, the Assistant Secretary shall send a notice granting or denying discretionary review within 15 days and, upon granting such review shall issue a decision no later than 30 days from the date discretionary review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.

§ 455.155 Finality of decision.

A decision § 455.153 shall be final for DOE if there is no review sought under § 455.154. If there is review under § 455.154, the decision thereunder shall be final for DOE, and no appeal shall lie elsewhere in DOE.

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Parts 577 and 578

Supportive Housing Demonstration—Transitional Housing; Permanent Housing for Handicapped Housing; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Parts 577 and 578

[Docket No. R-91-1575; FR-2878-P-01]

RIN 2506-AB10

Supportive Housing Demonstration—Transitional Housing; Permanent Housing for Handicapped Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement changes to the Supportive Housing Demonstration program made by the National Affordable Housing Act (Pub. L. 101-625, approved Nov. 28, 1990). The rule also proposes other changes to the program that HUD has determined, based on experience with the program, would be beneficial to the purpose of the program.

DATES: Comment due date: March 6, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Special Needs Assistance Programs, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; (202) 708-4300 (TDD: (202) 708-2565). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Some of the information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980, and have been approved and assigned OMB control numbers 2502-0361 and 2506-0112. New information collection requirements contained in the rule have been submitted and are pending approval. Until approved by OMB and assigned an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in this document under the heading, Other Matters. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent by March 5, 1992 to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

The Supportive Housing Demonstration Program is authorized by title IV of the Stewart B. McKinney Homeless Assistance Act to provide assistance to private nonprofit organizations and governmental entities for use in providing housing and supportive services to the homeless. The Supportive Housing Demonstration consists of two programs—Transitional Housing and Permanent Housing for Handicapped Homeless. The existing regulations for these programs are contained in 24 CFR part 577 (Transitional Housing) and part 578 (Permanent Housing for Handicapped Homeless).

Section 833 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) amended title IV of the McKinney Act, making several changes to the Supportive Housing Demonstration programs. This rule would implement those changes. In addition, the Department is proposing other changes to parts 577 and 578. Some of these changes would clarify or reorganize the regulations. Others, which are based on the experience gained through operating the programs, would be more substantive in nature. The regulations are published in their entirety to assist the reader.

II. Proposed Rule

1. National Affordable Housing Act

Assistance Available

Section 833(c) of the NAHA amended section 423(a) of the McKinney Act to change the form of assistance for acquisition and substantial rehabilitation of existing structures for use in the provision of supportive housing from advances, which were subject to repayment under certain circumstances, to grants. All references in the rule to advances would be changed accordingly.

In addition to the prospective nature of this change in the form of assistance, section 833(c) also amended section 423(b) of the McKinney Act to authorize the conversion of advances made to past recipients under section 423(a) to grants, under terms and conditions prescribed by the Secretary. Under the proposed rule, §§ 577.310 and 578.310 would be amended to convert all past advances to grants, which may be subject to repayment if the facility is not operated as Supportive Housing for ten years after initial occupancy, or if the facility is sold for a different use during the 20-year period after initial occupancy.

Section 833(e) further amended section 423(a) of the McKinney Act to authorize grants in an amount not to exceed $400,000 for new construction of a structure for use in the provision of supportive housing. Under the existing rule (§§ 577.112 and 578.112), advances for new construction have been available only under very limited circumstances, which were prescribed by an amendment to the McKinney Act in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988. The Department only made one such advance, because of the strict requirements imposed by the amendment. Sections 577.112 and 578.112 would be amended to provide for new construction grants of up to $200,000 (or up to $400,000 in high cost areas) or the total cost of the construction less the applicant's matching share, whichever is lower. The strict requirements for new construction assistance in the existing rule would be modified. Under the proposed rule, applicants would be required to show that costs associated with new construction are substantially less than the costs associated with rehabilitation or that there is a lack of available units that could be rehabilitated at a cost less than new construction. In addition to these amendments of §§ 577.112 and 578.112, the rule would also amend §§ 577.5 and 578.5 to define "new construction" as the building of a structure when none existed or an addition to an existing structure that increases the floor area by more than 100 percent.

Grants to establish and operate a child care services program were authorized by section 833(g) as a type of

assistance for the Transitional Housing Program. Under the existing rules for both the Transitional and the Permanent Housing Programs, the cost of child care has been included as an eligible supportive services cost (see paragraph (f) of the definition of *supportive services* in § 577.5 and paragraph (e) in the definition in § 578.5). The Department would continue to fund child care services as an eligible supportive services cost, if they comply with the statutory criteria. The proposed rule would define child care services, in accordance with section 833(g), in §§ 577.5 and 578.5.

Under the existing rules, assistance for supportative services and operating costs has been available for up to five years to Transitional Housing recipients and up to two years to Permanent Housing recipients. Section 833(d) of the NAHA has amended the McKinney Act to authorize assistance for these costs, for both Transitional and Permanent Housing, for a five-year period, with possible renewal for another five-year period.

The proposed rule would make up to 75 percent of a recipient's supportive services and operating costs available for the first two years and up to 50 percent of the cost for the next three years. A recipient could then reapply and be renewed for assistance for an additional five years, provided the recipient demonstrates progress in assisting homeless persons with housing and effectiveness in assisting homeless persons to achieve independence. In reviewing applications for renewal, HUD would consider whether the recipient is carrying out the activities as proposed in the initial application, in a timely manner, and meeting the program's goals. HUD would take into consideration the fact that some populations have a larger number and more intractable problems than others.

Under the renewals, HUD would provide up to the lower of 50 percent of the total supportive services and operating costs in years 6 through 10, or the amount of assistance for supportive services and operating costs provided for the final year of the initial funding period, multiplied by the number of years in the renewal period. (See §§ 577.117, 577.217, 578.117, and 578.217.)

Section 424(a)(2)(D) of the McKinney Act required that all recipients of assistance provide assurances satisfactory to the Secretary that the project assisted would be operated for not less than 10 years. This requirement was implemented in the program rules at §§ 577.210(b)(6) and 578.210(b)(8) Section 833(j) of the NAHA has amended this provision to require the 10-year commitment only from recipients of acquisition, rehabilitation, or new construction grants, and the rule would be amended accordingly. Section 833(j) amended section 424 further to require recipients of grants for supportive services and operating costs to provide an annual assurance, for each year the assistance is received, that the project will be operated for the purpose specified in the application. The proposed rule includes this requirement at §§ 577.305(f) and 578.305(f).

Waiver of Site Control

Section 424(a)(3) of the McKinney Act provides that an applicant must furnish reasonable assurances that it will own or have control of a site for its proposed project not later than six months after notification of an award, and may obtain ownership or control of a different site than the one specified in the application. However, section 424(a)(3) further provides that, if the applicant fails to obtain ownership or control within one year after notification of an award, the grant will be recaptured. Section 833(f) amended section 424(a)(3) to provide for a waiver of these site control requirements where the Secretary determines that these requirements are inapplicable because, under the application, the persons to be served own or control, or will eventually own or control, the site.

HUD interprets this provision as applying to situations where an applicant does not propose to have control of a site but rather proposes to assist a homeless family or individual in obtaining a lease, which may include assistance with rent payments, and receiving supportive services for up to two years, after which time the family remains in the same housing but on an independent basis. Rather than obtaining housing for homeless persons who, when self-sufficient, vacate the housing for use by other homeless persons, the provider instead helps the homeless persons become established in the housing. The provider then repeats the assistance at another site.

Therefore, §§ 577.210(c) and 578.210(c) would provide that waivers will be approved, on a case-by-case basis, if, in addition to proposing this concept, an application (1) includes comprehensive supportive services appropriate to the needs of the population to be served; (2) does not request funds for acquisition, rehabilitation, or new construction; and (3) commits the applicant to begin providing assistance to at least one homeless family or individual within 60 days of grant execution. HUD believes that acquisition, rehabilitation, and new construction are infeasible with this concept because those activities carry with them a commitment to use the assisted structures for transitional housing for a ten-year period.

Eligible Applicants

The McKinney Act, as originally enacted, limited eligibility for Permanent Housing assistance to the State in which the permanent housing is located, or the State housing agency (or other State agency) that customarily implements housing programs for the State and that is identified by statute to participate in housing programs in the State. The State then provides the assistance to a project sponsor (a private nonprofit organization or public housing agency (PHA)) for the operation of the permanent housing. Section 833(k) amended the McKinney Act to include Indian tribes as eligible applicants for Permanent Housing assistance. (Tribes have been eligible for Transitional Housing assistance since the beginning of the program.) Section 578.5 has been amended to include tribes in the definition of *applicant* as well as the definition of *tribe*. All requirements applying to States as applicants (and recipients) would apply to tribes, with the exception of CHAS requirements, discussed in the next section.

Miscellaneous Provisions

Section 833(b) increased the maximum number of handicapped homeless persons in a Permanent Housing structure from 8 to 16, but only if not more than 20 percent of the units in the structure are designated for such persons. Sections 578.5 and 578.325(a) would be amended to accommodate this change. The maximum number of residents in a group home would not be increased. (The rule would continue to allow HUD to waive these limitations, as described in § 578.325(d).)

Section 833(i) amended section 424(c) of the McKinney Act to require an applicant to agree or certify that it will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services with Supportive Housing assistance. Further, the address or location of any housing used as a family violence shelter assisted with Supportive Housing funds may not be made public without the written authorization of the recipient. The proposed rule includes this provision in §§ 577.210(b) and 578.210(b).

The statutory selection criteria of "site control" and "employment assistance program" were eliminated by section

833(h). These criteria would be eliminated from §§ 577.215 and 578.215.

In the past §§ 577.150 and 578.150 provided that assistance could not be provided to, or within the jurisdiction of, a State, city, or county, unless the jurisdiction had a HUD-approved Comprehensive Homeless Assistance Plan (CHAP) and the applicant had obtained a certification of consistency with the plan. These sections implemented section 401 of the McKinney Act. Section 836 of the NAHA amended section 401 to require each grantee receiving assistance to certify that it is following a Comprehensive Housing Affordability Strategy (CHAS) or a CHAP approved within 180 days of enactment of the NAHA or such longer period of time as the Secretary prescribes, and to delete all CHAP requirements as of October 1, 1991. That change was implemented for all jurisdictions except Indian tribes in an interim rule published at 56 FR 4480 on February 4, 1991.

This proposed rule would implement section 836 as it applies to tribes. Unlike other applicants, Indian tribes have not previously been required to submit a CHAP. Further, they were not included in the NAHA definition of a "jurisdiction," the entity charged with submitting a CHAS. Therefore, the Department concluded that they need not submit a housing strategy, or CHAS. However, the Senate Report accompanying NAHA states in the discussion of the HOME program:

> Although a tribe would not be required to submit a housing strategy, as provided for in Section 105, a grant application shall demonstrate how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing within the tribe's jurisdiction. S. Rep. No. 316, 101st Cong., 2d Sess. 65 (1990).

During Fiscal Year 1991, Indian tribes participating in the McKinney Act programs were required to submit a biennial CHAP before or with their application for funding. After October 1, 1991, Indian tribes participating in these programs are required under §§ 577.150 and 578.150 to complete application forms that comply with the language of the Senate Report, certifying that they are following the strategy outlined in the application; except that with respect to Indian tribes having a biennial CHAP covering Fiscal Year 1992, this requirement will not become applicable until after October 1, 1992.

Applicants other than Indian tribes had submitted annual CHAPs in October 1990. HUD did not require the filing of new biennial CHAPS by those applicants in 1991. As a result, in Fiscal Year 1992, non-Indian tribe applicants must submit a certification of consistency with an approved CHAS and do not have the option of certifying compliance with a biennial CHAP filed in 1991.

2. Other Amendments

Definitions (§§ 577.5 and 578.5)

The following changes would be made to definitions contained in §§ 577.5 and 578.5 of the existing regulations:

The definition of *handicapped* would be changed to specifically include persons with emotional impairments, reflecting the definition of "person with disabilities" in section 811(k)(2) of the NAHA. Section 811 of the NAHA provides for a new supportive housing program for persons with disabilities to replace the loan program for nonelderly handicapped persons under section 202 of the Housing Act of 1959. Section 422(2) of the McKinney Act defines "handicapped" as an individual who is handicapped within the meaning of section 202. The proposed rule amends the definition in §§ 577.5 and 578.5 to pick up the clarification in the successor program that emotional impairments are intended to be included in the definition.

In addition, the proposed rule would delete the exclusion in the definition of handicapped persons in §§ 577.5 and 578.5 of persons whose sole impairment is alcoholism or drug addiction. For purposes of the Section 202 and Section 811 programs, the definition of *handicapped* or persons with disabilities (in 24 CFR 885.5 and 890.105) excludes a person whose sole impairment is alcoholism or drug addiction. The Section 202 program and now the Section 811 program are intended to serve a large array of disabled persons. Since 1979, for purposes of the Section 202 program, it has been the opinion of the Department that the definition in section 202(d)(4) (and now in section 811(k)(2)) cannot be construed to exclude otherwise qualified alcoholics and drug addicts and that a statutory amendment would be needed to accomplish such an exclusion. Whether an alcoholic or drug addict is disabled or handicapped within the section 202 statutory definition depends on the nature and severity of the individual's impairment. In the Section 202 program (and now the Section 811 program), the limitation on eligibility to qualified handicapped individuals means that a handicapped individual must meet general program eligibility requirements. A handicapped person may be denied services or benefits of a program if the person fails to meet eligibility criteria that are applied to all potential beneficiaries, even if the reason the person does not meet those criteria is related to the handicap. Eligibility may also be restricted as a result of statutory or policy limitations on the type of housing that will be provided under the program.

The Department has revisited this issue and has determined that, within the context of the Supportive Housing Demonstration programs only, persons whose impairment is alcoholism or drug addiction would be considered handicapped, as long as they meet the additionally required statutory three-prong test that the impairment (1) is expected to be of long-continued and indefinite duration; (2) substantially impedes his or her ability to live independently; and (3) is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

The Department previously made the same determination in the Shelter Plus Care Guidelines, published February 4, 1991 at 56 FR 4494. HUD implemented the Section 202 component of Shelter Plus Care by eliminating the exclusion of persons whose sole impairment is alcoholism or drug addiction from the definition of handicap on the basis that the statutorily stated purpose of that program was to assist "homeless persons with disabilities (primarily persons who are seriously mentally ill, *have chronic problems with alcohol, drugs, or both,* or have acquired immunodeficiency syndrome and related diseases)" (emphasis added).

While the Supportive Housing Demonstration does not have a statutory mandate to serve alcoholics and drug addicts, the program purpose is to serve the homeless, a subgroup of the general populace with a high incidence of alcoholism and drug addiction. The Inter-Agency Council on the Homeless states at page 33 of its 1990 Annual Report:

> Based on a variety of studies completed in the last decade, the National Institute on Alcohol Abuse and Alcoholism (NIAAA) of the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) estimates that 35–40% of the homeless population suffers from chronic alcohol problems * * *. [S]tudies indicate that alcoholism among homeless people is more severe than it is among the general population, as measured by physiological and behavioral symptoms of the disease (e.g., blackouts, DT's, early morning drinking, and experiences of adverse social consequences such as drinking-related arrests, family dissolutions, loss of jobs, etc.).
>
> Although the prevalence of other drug use in the homeless population is less studied, NIAAA in consultation with the National Institute on Drug Abuse, Rossie, and others estimate that approximately 10% to 20% of

homeless persons have chronic problems with drugs other than alcohol.

Further, the Supportive Housing Demonstration requires a clinical fit between the audience and the supportive services to be provided. Recipients must provide "supportive" housing (section 421(a) of the McKinney Act), meaning that the project assisted must include both housing and supportive services (section 422(12)). The supportive services are to address the special needs of the homeless persons intended to be served by the project (section 422(13)).

This approach does not conflict with the statute or the regulatory approach to eligibility in the Section 202 and Section 811 programs. The Supportive Housing Demonstration applies the section 811 definition and continues to apply the three-prong test first applied in the Section 202 nonelderly handicapped program. The difference in emphasis of the persons served is based on programmatic policy consideration of the groups to be served, the facilities designed to serve this population, and the nature of the program.

Because of confusion on the part of some applicants and recipients, the Department wants to restate in this preamble its understanding of the statutory definition of the term *homeless* as repeated in this rule. The Department places the section 103 definition in the context of the findings of Congress in section 102(a) of the McKinney Act. The first finding states that "the Nation faces an immediate and unprecedented crisis due to the *lack* of shelter for a growing number of individuals and families, including elderly persons, handicapped persons, families with children, Native Americans, and veterans[.]" (Emphasis added.) All the other findings, as well as the purpose in section 102(b), use the terms "homeless" or "homelessness." The Department, therefore, concludes that "lack of shelter" and "homelessness" are used synonymously in section 102.

Misunderstandings regarding the definition of homeless have arisen in two areas. First, there has been confusion over the distinction between persons living in overcrowded or substandard housing and persons who are homeless. The Department does not believe that the limited resources of the Supportive Housing Demonstration programs were intended to be used to serve persons who are poorly housed. The Department administers other programs to serve these persons, such as the Section 8 Housing Assistance Payments programs, public and Indian housing, and the HOME program. The intent of the Supportive Housing Demonstration programs is to help persons who lack shelter.

The other misunderstanding involves the distinction between persons needing supportive housing (*i.e.*, housing combined with supportive services) and persons who are homeless. The Department recognizes that supportive housing is important for several populations. The Section 202 program has long been a source of supportive housing for elderly and handicapped persons. A new program that will provide supportive housing for persons with disabilities was authorized by section 811 of the NAHA. However, many persons needing supportive housing are not homeless. The limited resources available under the McKinney Act's Supportive Housing Demonstration programs must be used for homeless persons.

In general, homeless persons are persons living in places designed to provide temporary living accommodations, such as emergency shelters, or persons living in public or private places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The latter group of homeless persons are sometimes referred to as persons living "on the street."

The Department also considers as homeless those persons who would become homeless imminently because they are being evicted from private dwelling units or are handicapped persons being discharged from institutions, and because no subsequent residences have been identified and they lack the resources and support networks needed to obtain access to housing. The standard to be followed in determining whether these persons are homeless is to ask whether without the Supportive Housing Demonstration program they would spend the night in a shelter or on the street.

The proposed rule would amend the definition of *operating costs* in §§ 577.5 and 578.5 to allow repair and maintenance reserves as an eligible operating cost. This change would recognize the need for funds to be set aside for future repairs and maintenance. The definition of *supportive services* would also be amended to add case management as a service eligible for assistance. Case management is an essential tool for assuring that residents are receiving the appropriate services and for assisting their progress toward independence.

Under the existing Transitional Housing rule, a *recipient* is required to operate the housing. The proposed rule would amend this definition in § 577.5 to clarify that a recipient may, as an alternative, contract with other organizations to carry on the day-to-day operations of the housing.

The definition of *rehabilitation* in §§ 577.5 and 578.5 would be changed to show the difference between rehabilitation and new construction. The existing definition is unnecessarily complicated. Under the proposed rule, rehabilitation would be defined as the improvement or repair of an existing structure or an addition to an existing structure that does not increase the floor area by more than 100 percent. The rule would continue to recognize that minor or routine repairs are not considered rehabilitation.

Types of Assistance (§§ 577.100 and 578.100)

Sections 577.100 and 578.100 would be amended to allow acquisition assistance for land when it will be used for the new construction of transitional or permanent housing. This change would be consistent with the new authority to use Supportive Housing assistance for new construction.

These sections would also describe the ways in which assistance may be used. Assistance would be available to: (1) Establish new transitional or permanent housing facilities; (2) expand existing housing to increase the number of persons served or the level of services provided; (3) bring housing to applicable State and local health and safety standards; (4) replace the loss of private funding; and (5) continue funding for supportive services or operating costs, as authorized by the NAHA and described above. Item (4) would be added to help maintain the viability of existing homeless facilities in instances where all funds originally committed by a private organization have been spent and, although further funding is needed, the private organization does not plan to provide more.

Acquisition and Rehabilitation Grants (§§ 577.105, 577.110, 578.105, 578.110)

Under the McKinney Act as originally enacted, advances were available for up to $200,000 for acquisition, substantial rehabilitation, or acquisition and rehabilitation of an existing structure. Assistance for moderate rehabilitation was available in the form of grants. HUD's rule, promulgated shortly after enactment of the original legislation, limited grants for moderate rehabilitation to $100,000, although the statute had placed no limit on the amount of a moderate rehabilitation grant. The McKinney Act was later amended by the Stewart B. McKinney

Homeless Assistance Amendments Act of 1988 to allow moderate rehabilitation grants for up to $200,000, and the rule was amended accordingly. The rule change proposed in this document would eliminate the distinction between substantial rehabilitation and moderate rehabilitation. The Department believes that there is no useful purpose for distinguishing between these types of assistance, especially after the NAHA amendments in 1990 changed acquisition and substantial rehabilitation assistance from advances to grants and since the maximum amounts available for each are the same.

The rule would provide for acquisition grants for up to $200,000 in §§ 577.105 and 578.105, and for rehabilitation grants for up to $200,000 in §§ 577.110 and 578.110 without regard to whether the rehabilitation is substantial or moderate. Assistance under both categories—acquisition and rehabilitation—would continue to be available.

While the rule would generally continue to prohibit assistance for acquisition of existing facilities or programs currently serving the homeless, it would allow an exception in §§ 577.105(b) and 578.105(b) for applicants that have operated programs using properties leased through the Single Family Property Disposition Homeless Initiative. Under this exception, HUD would consider applications from those applicants for grants for acquiring the properties. This would allow such properties to continue being available for homeless persons rather than being returned to HUD after the lease period ends.

Supportive Services Costs (§§ 577.115 and 578.115)

In addition to the changes discussed in the section above on the amendments by the NAHA to assistance for supportive services, the rule would permit recipients of grants for supportive services costs to continue providing services to former residents for up to six months after they have left transitional housing, provided in all they do not receive services for more than 24 months. This would enable recipients that serve persons who, although living independently, need supportive services during the period of time immediately after leaving transitional housing to help them adjust to their new situations. Studies have shown that such services significantly increase the likelihood that homelessness will not reoccur.

Technical Assistance (§§ 577.120 and 578.120)

Sections 577.120 and 578.120 would be added to the rule to provide for a set-aside of up to two percent of the amounts available annually for the Supportive Housing Demonstration to provide technical assistance to applicants (or prospective applicants) and recipients of funds. Technical assistance in the areas of establishing and operating programs, as well as providing and obtaining supportive services, would include written materials and training workshops. The Department believes that providing such technical assistance would improve the quality and cost effectiveness of the programs serving the homeless.

Matching Requirements (§§ 577.130 and 578.130)

With regard to the value of "in-kind" contributions that HUD will include as a source of matching funds for acquisition, rehabilitation, and new construction grants, the rule would be amended to increase the value of volunteer time and services from $5 an hour to $10, and permit donated professional services, such as services donated by health care professionals, to be counted at the customary charge for the service provided (§§ 577.130(c)(1) and 578.130(c)(1)). The Department recognizes the important role that volunteers perform in the success of programs serving the homeless, and believes that the use of volunteers is indispensable in building a community-based program.

Assistance Under Other HUD Programs (§§ 577.135 and 578.135)

Sections 577.135 and 578.135 prohibit the use of assistance in facilities that involve a structure that is assisted by a HUD-administered housing program or where residents will receive HUD-administered assistance. The Department is considering changing its policy to allow recipients to accept persons with Section 8 Certificates, provided the requirements of the Section 8 Certificate program are met. (Those requirements are described in 24 CFR part 882.) The Housing Assistance Payment received by the owner would be deducted from the amount of operating costs obligated by HUD under the grant agreement. If adopted, this policy change would be included in the final rule, although it does not appear in the text of today's proposed rule. The Department invites the public to submit specific comments on this proposal.

Homeless persons obtaining Section 8 Certificates often need supporting services to address underlying causes of homelessness. Permitting Section 8 Certificate holders to use the assistance initially in a transitional housing facility would help ensure that the needed services are received. After preparation for independent living, they may then use the Certificate to obtain permanent private market housing. (Persons with Section 8 Vouchers would not be accepted because the amount of rent that may be payable by a tenant is incompatible with the resident rent requirements of these programs.)

Application and Selection Process (Subpart D)

Sections 577.210 and 578.210, which describe the requirements for applications, would be amended to eliminate the requirement for a written statement from the local government in which the housing is located that the proposed use of the structure and site is not inconsistent with any local government plan. Experience with the program has shown that this requirement is confusing and unnecessarily burdensome to applicants, and is of minimal use to HUD in determining whether to approve an application. However, the requirement for evidence that the proposed use of the site is permissible under applicable zoning ordinances or regulations, or will be made permissible within four months of application submission, would be retained.

An application may also be considered for funding if it contains proof that a lawsuit or HUD complaint was filed challenging the legality of current zoning ordinances or regulations. This change would allow consideration of the application; however, any execution of grants would depend on the successful resolution of the challenge.

These sections would also be amended to require that applicants include in their applications evidence that the resources to carry out proposed activities will be available. This information is critical to HUD's decision on whether the applicant's proposal is financially feasible.

The sections on selection criteria (§§ 577.215 and 578.215) would be amended to delete detailed descriptions of each criterion. The factors relevant to each criterion will be described in detail in the notices announcing the availability of funds. This change would allow maximum program flexibility in responding to any changing programmatic needs. These sections would also be amended to include as a selection factor the extent to which an

applicant for grants for operating and supportive services costs proposes funds in excess of the minimum amounts required for its share of those costs.

In addition, the selection criterion for permanent housing applications with regard to neighborhood integration would be eliminated. This criterion has not proved useful in rating applications. However, the requirement for neighborhood integration is retained as an eligibility criterion since it is required by section 422(13)(B) of the McKinney Act. The rule would clarify, in § 578.325(c), that each permanent housing facility must be integrated into the neighborhood in which it is located, and that this is evidenced by plans for resident participation in neighborhood activities and institutions. This does not mean that neighborhood acceptance is required.

A selection criterion regarding project quality would be added for transitional housing applications. Similar to the project quality criterion in the permanent housing program, it refers to the overall quality of the transitional housing program, e.g., the extent to which the program meets the total needs of residents including assurance of security within and around the facility, access to services and transportation, and privacy space for social and recreational needs.

Sections 577.225 and 578.225, which describe the procedure for final selection, currenlty provide that, in the event of a tie between applicants, HUD will use the quality of the proposal as one of the selection criteria in determining which application should be selected. The proposed rule would replace that criterion with the delivery of supportive services, which is one of the selection criteria of §§ 577.215 and 578.215 and, therefore, is defined and more easily measured. (The other selection criterion used in the case of ties is the need for the project, which is also a selection criterion under §§ 577.215 and 578.215.)

Paragraph (c) of §§ 577.225 and 578.225 describes the policy for awarding grants when HUD makes a procedural error in a funding competition that, when corrected, would result in sufficient points to warrant funding to an otherwise eligible applicant. The current rule provides that the applicant may be awarded assistance in the next funding competition. The proposed change would provide that HUD would award a grant as sufficient funds become available. This change in timing would allow funding with funds that may become available as a result of deobligation, and would speed up the funding for the applicant.

Habitability Standards (§§ 577.305 and 578.305)

The proposed rule would include, for the first time in the Supportive Housing Demonstration, minimal habitability standards for the housing of homeless persons under this program. Section 102 of the NAHA provides that the objective of national housing policy is to reaffirm the long-established national commitment to decent, safe, and sanitary housing for every American. HUD believes that the standards provided in the rule would ensure that the housing assisted under the programs for the homeless meets this national commitment.

Except where variations are approved by HUD, recipients would be required to provide housing that meets the standards described in §§ 577.305(b) and 578.305(b) with regard to: (1) Structure and materials; (2) access; (3) space and security; (4) interior air quality; (5) water supply; (6) sanitary facilities; (7) thermal environment; (8) illumination and electricity; (9) food preparation and refuse disposal; and (10) sanitary conditions.

Lead-based Paint (§§ 577.335(d) and 578.335(d)

The proposed rule would subject property under the program to the lead-based paint detection and abatement requirements in 24 CFR part 35 (HUD's basic lead-based paint prevention requirements). The Department is currently revising part 35 to reflect requirements based on current knowledge of the nature of the problem and the means to detect and abate it. Because of the revised language in this proposed rule concerning lead-based paint requirements, when the new part 35 regulations are issued, its requirements will automatically apply to this program.

Amendments to Approved Applications; Deobligation of Funds (§§ 577.400 and 578.400)

Sections 577.400 and 578.400 would be amended to provide that changes a recipient makes to its program after approval of an application must be approved by HUD. In addition, these sections would be amended to eliminate the provision that HUD may adjust an operating cost grant downward if a recipient receives more in rents from its residents than anticipated. HUD believes that it is unlikely that rents would produce large excesses, and in any case, may contribute to the long-term feasibility of the recipient's program.

Paragraph (f) would be added to §§ 577.400 and 578.400 to clarify HUD's authority to recapture funds that have been disbursed to a recipient if necessary.

III. Other Matters

Some of the information collection requirements in this rule have been reviewed by the Office of Management and Budget under the Paperwork Reduction Act and assigned OMB approval numbers, which appear in the text of the proposed regulations. The Department anticipates that the amendments to the programs proposed in this rule with regard to renewed assistance will increase the information requested and burden hours previously approved. Therefore, the amended information collection requirements have been submitted to OMB for review. The new information collection requirements and estimated burden hours are as follows:

Description	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
Application for renewed funding:					
Perm Hsg (578.217)	90	1	90	30	2700
Trans Hsg (577.217)	125	1	125	30	3750
Total annual burden					6450

This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would 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, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that some of the policies in this proposed rule may have a potential significant impact on the formation, maintenance, and general well-being of participating homeless families. Participation of families in the program can be expected to support family values, by helping families remain together; by enabling them to live in decent, safe, and sanitary housing; and by offering the supportive services that are necessary to acquire the skills and means to live independently in mainstream American society. Since the impact on the family is considered to be a beneficial one, no further review is necessary.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the provisions in the rule requiring applicants to assume the responsibilities for environmental review, decisionmaking, and action under NEPA and other environmental authorities have Federalism implications. While the assignment of these responsibilities under section 104(g) of the Housing and Community Development Act of 1974 is discretionary with HUD, it is authorized by and clearly the intent of section 443 of the McKinney Act. Therefore, the policy is not subject to review under Executive Order 12612.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities because the program has been designed to allow applicants to design programs that provide housing and supportive services to homeless families and individuals with as little regulation as possible under the existing law.

This rule was listed as item number 1452 in the Department's Semiannual Agenda of Regulations published at 56 FR 53380, 53417 on October 21, 1991, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 577

Community facilities, Employment, Grant programs—housing and community development, Grant programs—social programs, Handicapped, Homeless, Indians, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 578

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Handicapped, Homeless, Indians, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

For the reasons stated in the preamble, parts 577 and 578 of title 24 of the Code of Federal Regulations are proposed to be amended as follows:

PART 577—TRANSITIONAL HOUSING

1. Part 577, consisting of subparts A through F, would be revised to read as follows:

Subpart A—General

Sec.
577.1 Applicability and scope.
577.5 Definitions.
577.10 Waivers.

Subpart B—Assistance Provided

577.100 Types of assistance.
577.105 Acquisition grants.
577.110 Rehabilitation grants.
577.112 New construction grants.
577.115 Funding for supportive services costs.
577.116 Funding for operating costs.
577.117 Recipient share of supportive services and operating costs.
577.119 Administrative costs for grants.
577.120 Technical assistance.
577.125 Limitations on use of assistance.
577.130 Matching requirements.
577.135 Assistance under other HUD programs.

Subpart C—Comprehensive Housing Affordability Strategy

577.150 Comprehensive Housing Affordability Strategy.

Subpart D—Application and Selection Process

577.200 Notice of fund availability.
577.205 Selection process.
577.210 Application requirements.
577.215 Ranking criteria for applicants.
577.217 Application and selection process for renewal grants.
577.220 Environmental review.
577.225 Final selection.

Subpart E—Program Requirements

577.300 Grant agreement.
577.305 General operation.
577.310 Term of commitment; repayment of grant; conversion of advances to grants.
577.315 Displacement, relocation, and acquisition.
577.320 Resident rent.
577.325 Discharge of residents.
577.330 Flood insurance.
577.335 Applicability of other Federal requirements.

Subpart F—Administration

577.400 Obligation of funds, amendments, and deobligation.
577.405 Site change.

Authority: Sec. 426, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 577.1 Applicability and scope.

(a) *General.* The Supportive Housing Demonstration program contained in subtitle C of title IV of the Stewart B. McKinney Homeless Assistance Act is designed to develop innovative approaches for providing supportive housing, especially to deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handicapped homeless persons. A central purpose of the program is to provide supportive housing for deinstitutionalized homeless individuals and other homeless individuals with mental disabilities. It is designed to determine:

(1) The cost of acquisition, rehabilitation, new construction, or leasing of existing structures for the provision of supportive housing;

(2) The cost of operating such housing and providing supportive services to the residents of such housing;

(3) The social, financial, and other advantages of such housing as a means of assisting homeless individuals; and

(4) The lessons that the provision of supportive housing might have for the design and implementation of housing programs that serve homeless individuals and families with special needs, particularly deinstitutionalized homeless individuals, homeless families with children, homeless individuals with

mental disabilities, and other handicapped homeless persons.

(b) *Components.* The Supportive Housing Demonstration program consists of two components: Permanent housing for handicapped homeless persons and transitional housing. Part 577 of this title implements the transitional housing component of the program. Part 578 of this title provides for a program to assist in providing permanent housing for handicapped homeless persons.

§ 577.5 Definitions.

As used in this part:

Applicant means a State, metropolitan city, urban county, governmental entity, tribe, or private nonprofit organization that submits an application for assistance under this part. Governmental entities include those that have general governmental powers (such as a city or county), as well as those that have limited or special powers (such as public housing agencies).

Child care services means

(1) Establishing, licensing, and operating a child care facility for residents; or

(2) (i) Contributions for the child care costs of residents to existing community child care programs and facilities; and

(ii) Counseling designed to inform the residents of public and private child care services for which they are eligible.

(3) Child care services, whether an on-site facility operated by the recipient or an off-site facility contributed to by the recipient, must meet any applicable State and local laws.

Comprehensive Housing Affordability Strategy (CHAS or housing strategy) means the housing strategy prepared by a jurisdiction and submitted to HUD in accordance with 24 CFR part 91.

Date of initial occupancy means the date that the transitional housing is initially occupied by a homeless person for whom assistance is provided under this part. If the assistance is for an existing homeless facility, the date of initial occupancy is the date that services are first provided to the residents of transitional housing with funding under this part.

Deinstitutionalized homeless individual means a homeless individual with mental disabilities who has been discharged or released from a mental institution or hospital, a halfway house, or similar facility providing housing and supportive services to its residents. This term includes a homeless family, if the head of the family (or the spouse of the head of the family) is a deinstitutionalized homeless individual.

Employment assistance means

(1) Placement of residents in jobs outside the housing or, if this is not feasible, employment of residents in the operation and maintenance of the housing;

(2) Where necessary and appropriate, payment of reasonable transportation costs of residents to places of employment outside the housing;

(3) Employment counseling; and

(4) Technical courses leading to employment.

Handicapped or *Handicapped person* means a household composed of one or more persons at least one of whom is an adult who has a disability. A person is considered to have a disability if such person is determined to have a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions. This term includes:

(1) An individual who is developmentally disabled, *i.e.*, an individual who has a severe chronic disability that:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living; and

(G) Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual who is chronically mentally ill, *i.e.*, an individual who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (*e.g.*, by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, or recreation), and whose impairment could be improved by more suitable housing conditions.

Homeless means:

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(2) An individual or family that has a primary nighttime residency that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(3) This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

Homeless family with children means a homeless family that includes at least one parent or guardian and one child under the age of 18, a homeless pregnant woman, and a homeless individual in the process of securing legal custody of any person who has not attained the age of 18 years.

HUD means the Department of Housing and Urban Development.

Metropolitan city means a city that is classified as a metropolitan city under section 102(a)(4) of the Housing and Community Development Act of 1974. In general, metropolitan cities are those cities are those cities that are eligible for an entitlement grant under 25 CFR part 570, subpart D.

New construction means the building of a structure where none existed or an addition to an existing structure that increases the floor area by more than 100 percent.

Operating costs means expenses that a recipient incurs for:

(1) Administration (including staff salaries), maintenance, minor or routine repair, repair and maintenance reserve, security and rental of the housing;

(2) Utilities, insurance, fuel, furnishings, and equipment for the housing;

(3) Relocation assistance under § 577.315 of this part, including payments and services; and

(4) Other costs associated with operating the transitional housing.

Private nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(1) Have a voluntary board;

(2) Have a functioning accounting system that is operated in accordance

with generally accepted accounting principles, or designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(3) Practice nondiscrimination in the provision of assistance under the transitional housing program in accordance with the authorities described in § 577.335(a) of this part.

Recipient means the applicant, approved by HUD as financially responsible, that executes a grant agreement with HUD to provide transitional housing. The recipient is responsible for operating or contracting for the operation of transitional housing and for providing or coordinating the provision of supportive services to the residents of the housing.

Rehabilitation means the improvement or repair of an existing structure or an addition to an existing structure that does not increase the floor area by more than 100 percent. Rehabilitation does not include minor or routine repairs.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Supportive services means services provided for the purpose of facilitating the movement of the residents of transitional housing to independent living. Supportive services must address the special needs of the homeless to be served by the transitional housing (such as deinstitutionalized homeless individuals, homeless families with children, homeless individuals with mental disabilities, and other handicapped homeless persons). Supportive services, may include, but are not limited to:

(1) Case management;

(2) Assistance in obtaining permanent housing;

(3) Medical and psychological counseling and supervision;

(4) Live skills training;

(5) Nutritional counseling;

(6) Assistance in obtaining other Federal, State, and local assistance available for residents of transitional housing facilities, including mental health benefits; employment counseling; medical assistance; Veterans' benefits; and income support assistance, such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, and Food Stamps, and

(7) Other services, such as child care and employment assistance.

All or part of the supportive services may be provided directly by the recipient or by arrangement with public or private service providers.

Transitional housing means assistance under this part:

(1) That is designed to provide housing and appropriate supportive services to homeless persons, including (but not limited to) deinstitutionalized homeless individuals with mental disabilities and other homeless individuals with mental disabilities, and homeless families with children; and

(2) That has as its purpose facilitating the movement of homeless individuals to independent living within 24 months, or within a longer period determined by HUD as necessary to facilitate the transition.

Tribe means any Indian tribe, band, group, or nation, including Alaska Indians, Aleuts, and Eskimos and any Alaskan Native Village, of the United States, which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (321 U.S.C. 6701) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

Urban county means a county that is classified as an urban county under section 102(a)(6) of the Housing and Community Development Act of 1974. In general, urban counties are those counties that are eligible for an entitlement grant under 24 CFR part 570, subpart D.

§ 577.10 Waivers.

Upon completion of a determination and finding of good cause by the Assistant Secretary for Community Planning and Development, HUD may waive any provision of this part in any particular case subject only to statutory limitations. Each waiver must be in writing, and must be supported by documentation of the facts and reasons that formed the basis for the waiver. HUD will publish a notice in the **Federal Register** informing the public of all waivers granted under this section and containing all relevant information concerning the waiver.

Subpart B—Assistance Provided

§ 577.100 Types of assistance.

(a) *Assistance available.* Grant assistance for transitional housing is available for:

(1) Acquisition of land or structures;

(2) Rehabilitation of structures;

(3) New construction;

(4) Operating cost; and

(5) Supportive services costs, including costs for employment assistance and child care services;

(b) *Eligibility for more than one type of assistance.* Applicants may apply for more than one type of assistance.

(c) *Use of transitional housing assistance.* Assistance available for transitional housing may be used:

(1) To establish new transitional housing facilities;

(2) To expand transitional housing in order to increase the number of homeless persons served or to increase the level of supportive services provided to homeless persons;

(3) To bring transitional housing to a level that meets State and local government health and safety standards;

(4) To replace the loss of private funding for transitional housing that has ceased after completion of the funding period specified in the award of private funding, up to the amount lost or the limit in § 577.117 of this part, whichever is lower; and

(5) To continue funding transitional housing where the recipient has received funding under this part for supportive services or operating costs.

(d) *Structures used for multiple purposes.* Structures used to provide transitional housing may also be used for other purposes. For example, a structure may contain facilities for an emergency shelter as well as transitional housing, may be used to provide supportive services to the public at large, or may include commercial space. Under these circumstances, however, acquisition, rehabilitation, and new construction grants will be available only in proportion to the use of the structure for transitional housing, and the funding for operating costs and supportive services costs will be available only to support the costs related to transitional housing.

(e) *Technical assistance.* HUD may offer technical assistance, as described in § 577.120 of this part.

§ 577.105 Acquisition grants.

(a) *Use.* HUD will grant funds to recipients to:

(1) Defray the cost of the acquisition of real property selected by the recipients for use in the provision of

transitional housing (including property acquired through the Single Family Property Disposition Homeless Initiative); or

(2) Repay the outstanding debt on a loan made to purchase property that will be used in the provision of transitional housing, if the property has not been used previously as supportive housing.

(b) *Existing facilities.* HUD will not provide assistance under this part for acquisition of existing facilities that currently serve homeless persons, except properties leased through the Single Family Property Disposition Homeless Initiative, described in subpart E of 24 CFR part 291.

(c) *Amount.* If the applicant meets the matching share requirements at § 577.130 of this part, the maximum grant available for acquisition is the lower of:

(1) $200,000; or

(2) The total cost of the acquisition minus the applicant's contribution toward the cost of the acquisition.

(d) *Increased amounts.* In areas determined by HUD to have high acquisition and rehabilitation costs, grants of more than $200,000, but not more than $400,000, may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements for matching funds described in § 577.130 of this part are applicable to increased grants.

§ 577.110 Rehabilitation grants.

(a) *Use.* HUD will grant funds to recipients to defray the cost of rehabilitation of structures selected by the recipients for use in the provision of transitional housing.

(b) *Amount.* If an applicant meets the matching share requirements at § 577.130 of this part, the maximum grant available for rehabilitation is the lower of:

(1) $200,000; or

(2) The total cost of the rehabilitation minus the applicant's contribution toward the cost of the rehabilitation.

(c) *Increased grants.* In areas determined by HUD to have high acquisition and rehabilitation costs, grants of more than $200,000 but not more than $400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements for matching funds described in § 577.130 of this part are applicable to increased grants.

§ 577.112 New construction grants.

(a) *Use.* HUD will grant funds to recipients to defray the cost of new construction of facilities for use in the provision of transitional housing where the applicant demonstrates that the costs associated with new construction are substantially less than the costs associated with rehabilitation or the applicant provides evidence of lack of available units that could be acquired and rehabilitated at a cost less than new construction.

(b) *Amount.* If the applicant meets the matching share requirements at § 577.130 of this part, the maximum grant available for new construction is the lower of:

(1) $200,000; or

(2) The total cost of the construction minus the applicant's contribution toward the cost of the new construction.

(c) *Increased grants.* In areas determined by HUD to have high acquisition and rehabilitation costs, grants of more than $200,000 but not more than $400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements for matching funds described in § 577.130 of this part are applicable to increased grants.

§ 577.115 Funding for supportive services costs.

(a) *General.* HUD will provide grants to pay a portion (as described in § 577.117 of this part) of the actual supportive services costs of transitional housing.

(b) *Supportive services costs.* Costs associated with providing supportive services, approved by HUD, to residents of transitional housing for the purpose of facilitating their movement to independent living include salaries paid to providers of supportive services, the costs of conducting resident supportive services needs assessments, and any other costs directly associated with providing such services. These services may also be provided to former residents of transitional housing for up to 6 months after they leave the facility, provided in all they do not receive services for more than 24 months.

§ 577.116 Funding for operating costs.

(a) *General.* HUD will provide grants to pay a portion (as described in § 577.117 of this part) of the actual operating costs of transitional housing.

(b) *Operating costs.* Operating costs are those associated with the day-to-day operation of the transitional housing. They include the actual expenses that a recipient incurs for administration, including staff salaries (but not salaries of employment assistance, child care services, or other supportive services providers which will be charged to those categories); maintenance; minor or routine repair; repair and maintenance reserve; security; rental, utilities, insurance, fuel, furnishings, and equipment costs for the housing; and relocation assistance under § 577.315 of this part, including payments and services.

§ 577.117 Recipient share of supportive services and operating costs.

(a) *General.* Assistance for supportive services and operating costs will be initially available for up to 75 percent of the total cost for two years and up to 50 percent of the total cost for the next three years. Assistance may be renewed under § 577.217 of this part for a period of time not to exceed the difference between the initial funding period and ten years from the date of initial occupancy. Assistance during the renewal period may be for up to the lower of:

(1) the amount of assistance for supportive services and operating costs provided under this part for the final year of the initial funding period multiplied by the number of years in renewal period; or

(2) 50 percent of the total cost of supportive services and operating costs during the renewal period.

(b) *Recipient share.* The recipient must show that it has cash resources to pay the percentage of the total cost of supportive services and operating costs not funded by HUD. Prior to the start of each operating year, the recipient will be required to submit documentation firmly establishing the availability of cash resources to pay the recipient's share of costs for the upcoming year. If this requirement is not met, HUD may withhold supportive services or operating cost payments.

(c) *Commitment of grant amounts.* Upon approval of an application for assistance for supportive services or operating costs, HUD will obligate amounts for a period not to exceed five operating years commencing on the date of initial occupancy. The total amount obligated will be equal to an amount necessary for five years of operation, less the recipient's share of such costs. Each year, following submission of the recipient's documentation of cash resources to pay its share of costs, HUD will make cost payments to the recipient for HUD's share of costs incurred that year. The recipient may reapply for a grant to pay a portion of the supportive services or operating costs of the transitional housing for a period not to exceed the difference between the initial funding period and ten years from the date of initial occupancy. If approved for renewal, the same commitment and

payment procedures will be followed as with the initial grant.

(Approved by the Office of Management and Budget under OMB Control Number 2502-0361)

§ 577.119 Administrative costs for grants.

(a) *General.* Up to five percent of any grant awarded under this part may be used for the purpose of paying costs of administering the assistance.

(b) *Administrative costs.* Administrative costs include the costs associated with accounting for the use of grant funds, preparing reports for submission to HUD, obtaining program audits, tracking clients to measure program effectiveness, and similar costs related to administering the grant after the award. This does not include the costs of carrying out activities eligible under §§ 577.105 through 577.116 of this part, since those costs are eligible as part of such activities.

§ 577.120 Technical assistance.

(a) *General.* HUD will set aside up to two percent of the amount available annually for the Supportive Housing Demonstration program to provide technical assistance under this part and part 578 in the following areas:

(1) Establishing facilities;

(2) Operating facilities; and

(3) Providing or obtaining supportive services for the residents.

(b) *Technical assistance.* Technical assistance is the provision of skills or knowledge by organizations or individuals to applicants (or prospective applicants) and recipients to help them plan, develop, administer, and/or evaluate their transitional housing program or specific activities more effectively. Technical assistance also includes the development, collection, processing, and dissemination of program information for local and national program management. The assistance may include, but is not limited to, written information such as papers, monographs, manuals, guides, and brouchures; person-to-person exchanges; and training such as seminars, classes, workshops, and meetings.

(c) *Selection of providers.* From time to time, as HUD determines the need, HUD will advertise and competitively select providers to deliver assistance to Supportive Housing Demonstration recipients or applicants (or prospective applicants). HUD may enter into contracts, grants, or cooperative agreements, as appropriate, to implement the technical assistance.

§ 577.125 Limitations on use of assistance.

(a) *Maintenance of effort.* No assistance received under this part (or any State or local government funds used to supplement this assistance) may be used to replace funds provided under any State or local government assistance programs previously used, or designated for use, to assist handicapped persons, homeless persons, or handicapped homeless persons.

(b) *Primarily religious organizations.*—(1) *Provision of assistance.* (i) HUD will provide assistance to a recipient that is a primarily religious organization if the organization agrees to provide housing and supportive services in a manner that is free from religious influences and in accordance with the following principles:

(A) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(B) It will not discriminate against any person applying for housing or supportive services on the basis of religion and will not limit such housing or services or give preference to persons on the basis of religion;

(C) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of housing and supportive services.

(ii) HUD will provide assistance to a recipient that is a primarily religious organization if the assistance will not be used by the organization to acquire a structure or to rehabilitate a structure owned by the organization, except as described in paragraph (b)(2) of this section.

(2) *Acquisition and rehabilitation of structures owned by a primarily religious organization.* Acquisition and rehabilitation grants may be used to rehabilitate a structure owned by a primarily religious organization, if the following conditions are met:

(i) The structure (or portion of the structure) that is to be rehabilitated with HUD assistance has been leased to a recipient that is an existing or newly established wholly secular organization (which may be established by the primarily religious organization under the provisions of paragraph (b)(3) of this section);

(ii) The HUD assistance is provided to the wholly secular organization (and not the primarily religious organization) to make the improvements;

(iii) The leased structure will be used exclusively for secular purposes available to all persons regardless of religion;

(iv) The lease payments paid to the primarly religious organization do not exceed the fair market rent of the structure before the rehabilitation was done;

(v) The portion of the cost of any improvements that benefit any unleased portion of the structure will be allocated to, and paid for by, the primarily religious organization;

(vi) The primarily religious organization agrees that, if the recipient does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of the improvements to the secular organization, and the secular organization will remit the amount to HUD.

(3) *Assistance to a wholly secular private nonprofit organization established by a primarily religious organization.* (i) A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a recipient. The wholly secular organization may be eligible to receive all forms of assistance available under this part.

(A) The wholly secular organization must agree to provide housing and supportive services in a manner that is free from religious influences and in accordance with the principles set forth in paragraph (b)(1)(i) of this section.

(B) The wholly secular organization may enter into a contract with the primarily religious organization to provide supportive services for the project. In such a case, the primarily religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles set forth in paragraph (b)(1)(i) of this section.

(C) The acquisition/substantial rehabilitation advance and the moderate rehabilitation grant are subject to the requirements of paragraph (b)(2) of this section.

(ii) HUD will not require the primarily religious organization to establish the wholly secular organization before the selection of its application. In such a case, the primarily religious organization may apply on behalf of the wholly secular organization. The application will be reviewed on the basis of the primarily religious organization's financial responsibility and capacity, and its commitment to provide

appropriate resources to the wholly secular organization after formation. The requirement with regard to site control, described in § 577.210(b)(9) of this part, may be satisfied if the primarily religious organization demonstrates site control and a commitment to transfer control of the site to the wholly secular organization after its formation. Since the wholly secular organization will not be in existence at the time of the application, it will be required to demonstrate that it meets the definition of private nonprofit organization contained in § 577.5 of this part. If such an application is selected for funding, the obligation of funds will be conditioned upon the compliance with these requirements.

§ 577.130 Matching requirements.

(a) *General.* The recipient must match the funding provided by HUD for grants for acquisition, rehabilitation, and new construction with an equal amount of resources from non-Federal sources. (Funds from Community Development Block Grants and Community Services Block Grants are considered non-Federal sources.)

(b) *Cash resources.* The matching calculation may include cash resources provided to the transitional housing by the recipient, State and local governments, private resources, and resident rent.

(c) *"In-kind" contributions.* The matching calculation may include the following "in-kind" contributions:

(1) Time and services contributed by volunteers to carry out the transitional housing program at the value of $10 an hour, except that donated professional services (*i.e.*, services ordinarily performed by donors for payment, such as services of health care professionals, that are equivalent to services they provide in their occupations) may be counted at the customary charge for the service provided;

(2) The value of contributions of materials or contributions of existing structures, or parts of structures, in the following manner:

(i) Contributions of materials and supplies;

(ii) A contribution of a fee ownership in a structure, to the extent of the fair market value of the structure or portion of the structure to be used for transitional housing, except to the extent funds under this part are not being used to finance acquisition of the structure; and

(iii) A contribution of a leasehold interest in a structure, to the extent of the fair rental value of the structure or portion of the structure to be used for transitional housing, except to the extent funds under this part are not being used to finance lease payments for the structure.

(d) *Maintenance of effort.* State or local government funds used in the matching contribution are subject to the maintenance of effort requirements described at § 577.125(a) of this part.

§ 577.135 Assistance under other HUD programs.

(a) *Supplemental assistance.* HUD will permit recipients to use any assistance that may be awarded under the Emergency Shelter Grants program (24 CFR part 576) or the Supplemental Assistance for Facilities to Assist the Homeless program (24 CFR part 579) in conjunction with assistance awarded under this part.

(b) *Ineligible projects.* HUD will not assist a facility under this part, if the transitional housing involves a structure that is assisted, or residents of the structure will receive assistance, under the United States Housing Act of 1937; section 202 of the Housing Act of 1959; section 221(d)(3) (BMIR) or section 236 of the National Housing Act; section 101 of the Housing and Urban Development Act; section 811 of the National Affordable Housing Act; or subtitle F, title IV of the Stewart B. McKinney Homeless Assistance Act.

(c) *HUD-owned properties.* (1) HUD will make HUD-owned single-family properties in its inventory available to applicants or potential applicants for acquisition grants to purchase for use as transitional housing for the homeless. To obtain these properties, applicants may request a listing of available properties from the HUD field office, Property Disposition Branch. If an applicant wishes to purchase a property or properties, it must enter into a lease-option agreement with HUD. Under the terms of the agreement, HUD will lease the property to the applicant for up to six months for one dollar. The lease-option agreement will state that the applicant may purchase the property at a stated price during the lease period. Except as provided in paragraph (c)(2) of this section, an applicant leasing property under this section may not sublease or otherwise occupy the property until after closing of the sale. During the lease period, applicants will be responsible for all taxes, utilities, and maintenance, excluding hazard insurance. Applicants demonstrating a lease-option agreement at the time their application for assistance is filed will be regarded as having site control of the property under § 577.210(b)(9) of this part. If the option is not exercised, the lease-option agreement will expire at the end of six months, and the property will be returned to HUD's inventory, unless an extension of time is authorized by HUD.

(2) An applicant may be allowed to sublease the property to the homeless while its application for assistance under this part is pending if the applicant demonstrates to HUD's satisfaction that it has the ability, in the event its application is not approved, to continue in a lease arrangement with HUD beyond the six-month lease term under the requirements of subpart E of 24 CFR part 291.

Subpart C—Comprehensive Housing Affordability Strategy

§ 577.150 Comprehensive housing affordability strategy.

(a) *Certifications.* Except as provided in paragraph (d) of this section, assistance may not be made available under this part unless the applicant has submitted a certification that the proposed activities are consistent with a Comprehensive Housing Affordability Strategy (CHAS) and, in the case of a jurisdiction, it has submitted a certification that it is following a HUD-approved CHAS.

(b) *Applicable CHAS for a jurisdiction.* The certification of consistency for a State, metropolitan city, urban county, or other government entity must be submitted by the public official responsible for submitting the CHAS.

(c) *Applicable CHAS for a private nonprofit organization.* The certification of consistency for a private nonprofit organization must indicate consistency with the CHAS of the lowest level of government in which the project is located that has a CHAS and the certification must be made by the public official responsible for submitting that CHAS.

(d) *Indian tribes.* (1) Before October 1, 1992, assistance may not be made available under this part to an Indian tribe unless the tribe has either:

(i) Submitted a certification of consistency with a biennial Comprehensive Homeless Assistance Plan (CHAP), as described in 24 CFR part 90, which was approved by HUD during fiscal year 1991, and a certification that it is following the CHAP; or

(ii) Completed an application form that demonstrates how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing within the tribe's jurisdiction, and submitted a certification that the tribe is following the strategy outlined in the application.

(2) After October 1, 1992, assistance may not be made available under this part unless the tribe has completed an application form that demonstrates how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing within the tribe's jurisdiction, and submitted a certification that the tribe is following the strategy outlined in the application.

Subpart D—Application and Selection Process

§ 577.200 Notice of fund availability.

When funds are made available for assistance for transitional housing, HUD will publish a notice of fund availability in the **Federal Register** in accordance with the requirements of 24 CFR part 12. The notice will:

(a) Give the location for obtaining application packages, which will provide specific application requirements and guidance;

(b) Specify the time and the place for submitting completed applications;

(c) State the amount and status of funding available under the notice;

(d) Describe the factors relative to each ranking criterion contained in § 577.215 of this part, and indicate the weight or relative importance of the criteria as they will be applied to the funding round announced in the notice;

(e) Specify the timing and conditions for curing technical deficiencies in a reviewed application;

(f) Provide a checklist of application submission requirements, including certifications;

(g) Announce any separate funding competitions under § 577.205(b) of this part, including the categories of transitional housing that will be subject to the separate funding competitions and the amount of funding available in each funding category; and

(h) Provide other appropriate program information and guidance, including purpose, authority, and eligibility.

§ 577.205 Selection process.

(a) *Selection process.* The selection process for assistance under this part consists of the following stages:

(1) Reviewing applications for eligibility for assistance (see § 577.210 of this part);

(2) Ranking applications (see § 577.215 of this part);

(3) Final selection (see § 577.225 of this part).

(b) *Separate funding competitions.* (1) HUD may establish separate funding competitions for specified categories of transitional housing (*e.g.*, transitional housing that is primarily designed to serve homeless families with children or deinstitutionalized homeless persons and other homeless persons with mental disabilities). If separate funding competitions are established, applicants within each category will compete against other applicants in the same category for a specified amount of funding. Selections within each category will be subject to the selection process described in paragraph (a) of this section.

(2) HUD will announce separate funding competitions, if any, in the notice of funds availability under § 577.200 of this part. The notice will designate the categories of transitional housing projects subject to the separate funding competition and the amount of funding available in each funding category.

(c) *Prohibition of disclosure of selection information.* The selection process for assistance under this part is subject to the prohibition of covered selection information regarding the selection process, as described in 24 CFR part 4. Applicants for or recipients of assistance who have received covered selection information may be subject to sanctions, as determined to be appropriate.

§577.210 Application requirements.

(a) *Application.* To be considered for assistance under this part, applications for assistance must be filed in the form prescribed by HUD under this section, must meet the requirements of this part, and must be submitted within the time period established by HUD in the notice of funds availability under § 577.200 of this part. HUD reserves the right to reject applications from any organization with an outstanding obligation to HUD that is in arrears or for which a payment schedule has not been agreed to, or whose response to an audit finding is overdue or unsatisfactory.

(b) *Application contents.* At a minimum, HUD will require applications to contain:

(1) Applicant data, including identity, description of past experience, and, for private nonprofit organizations, information on eligibility to receive assistance and financial responsibility.

(2) The type or types of assistance requested and the amount of funds requested for each type.

(3) A description of the proposed project, including information regarding:

(i) The property to be used, any proposed acquisition, rehabilitation, or new construction, and the estimated costs of those activities and how transitional housing funds are proposed to be used; the estimated value, as determined by an appraisal, of the structure if the fair market value of the structure is to be used as a source of matching funds, or the estimated value, as determined by an appraisal, of the fair rental value if that value is to be used as a source of matching funds;

(ii) The supportive services to be offered to the residents and the method by which such services will be provided, and plans for monitoring and evaluating such services; and

(iii) An estimated annual cash budget of operating costs and supportive services costs for a five-year period.

(4) A description of the size and characteristics (to include racial and ethnic data) of the particular homeless population that will occupy the transitional housing.

(5) Evidence of the public and private resources expected to be made available to meet the recipient share and matching requirements of §§ 577.117 and 577.130 of this part.

(6) For applications requesting grants for acquisition, rehabilitation, or new construction, an assurance satisfactory to HUD that the transitional housing will be operated for not less than 10 years for the purpose specified in the application.

(7) For applications requesting grants for operating costs or supportive services costs but not for acquisition, rehabilitation, or new construction, an assurance satisfactory to HUD that the transitional housing will be operated for the purpose specified in the application for the year for which such assistance is provided.

(8) A certification from the public official responsible for submitting the Housing Affordability Strategy for the appropriate jurisdiction, described in § 577.150 of this part, stating that the proposed project is consistent with the applicable housing strategy.

(9) Evidence that the applicant has control of the site or sites involved (*i.e.*, deed or other proof of ownership, lease, option to purchase or lease), or reasonable assurance that the applicant will have control of the site or sites not later than six months after notification of a grant. "Reasonable assurances" must be satisfied by identification of a suitable site and evidence that the applicant is engaged in negotiations for the purpose of gaining control of the identified site.

(10) Evidence that the resources to carry out transitional housing-assisted activities will be available, and evidence that resources are available to carry out activities that are not transitional housing-assisted but are essential to the acquisition, rehabilitation, or new construction of

any facility that will contain transitional housing-assisted programs.

(11) A written statement from the unit of general local government in which the transitional housing is proposed to be located that the proposed use of the site is permissible under applicable zoning ordinances and regulations or other evidence that the use of the project site is permissible under applicable zoning ordinances and regulations; or a statement from the applicant describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, with evidence that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully and within four months following submission of the application; or proof that a lawsuit or a HUD complaint related to the proposed site has been filed challenging the legality of current zoning ordinances or regulations under the Fair Housing Act.

(12) If the applicant plans to provide family violence prevention or treatment services with assistance under this part, a certification that the applicant will develop and implement procedures to ensure confidentiality of records pertaining to any individual receiving such services, and that it will not make public the address or location of any transitional housing used as a family violence shelter without the written authorization of the person or persons responsible for the operation of the facility.

(13) For applications requesting grants for acquisition, rehabilitation, or new construction, evidence that the proposed sites are accessible to supportive services and transportation.

(14) Other certifications, information, or data as prescribed by HUD in the application package, including disclosures required by 24 CFR part 12.

(c) *Waiver of site control.* HUD may waive, on a case-by-case basis, the requirement that the applicant have site control where:

(1) The applicant does not propose to have control of a site or sites but rather proposes to assist a homeless family or individual in obtaining a lease, which may include assistance with rent payments, and receiving supportive services for up to two years, after which time the family or individual remains in the same housing without further assistance under this part;

(2) The applicant does not request assistance for acquisition, rehabilitation, or new construction;

(3) The applicant commits to provide comprehensive supportive services appropriate to the needs of the population to be served;

(4) The applicant commits to begin providing assistance to at least one homeless family or individual within sixty days of the date of execution of the grant agreement by HUD.

(d) *Environmental review.* The environmental effects of each application must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and the related authorities listed in HUD's implementing regulations at 24 CFR part 50 or part 58. See § 577.220 of this part for a full discussion of the environmental review requirements for applications for assistance.

(Approved by the Office of Management and Budget under OMB Control Number 2506-0112)

§ 577.215 Ranking criteria for applicants.

(a) *In general.* Applicants will be assigned a rating score and placed in ranked order, based upon the criteria listed in paragraph (b) of this section, and described in more detail in the Notice of Funds Availability published in the **Federal Register** at the beginning of each program funding round.

(b) *Criteria.* HUD will award points for the following criteria:

(1) Applicant capacity;

(2) Innovative quality of proposal;

(3) Need for transitional housing in the area to be served;

(4) Delivery of supportive services;

(5) Matching resources for acquisition, rehabilitation, or new construction in excess of the required minimum;

(6) Recipient share of supportive services and operating costs in excess of the required minimum;

(7) Cost effectiveness;

(8) Project quality;

(9) Other criteria as determined by the Secretary.

§ 577.217 Application and selection process for renewal grants.

(a) *General.* To be considered for renewal funding for operating costs and supportive services, recipients must submit a request for such funding, in the form specified by HUD, to the local HUD field office serving the area in which the transitional housing is located. In order to assure the uninterrupted flow of supportive services and operating funds to recipients, the request must be submitted within three months after the start of the recipient's final operating year of funding under the initial grant.

(b) *HUD review.* Staff in the local HUD field office in which the project is located will evaluate the recipient's performance in the previous year(s) against the plans projected, and committed to, in the initial application for assistance, as amended. In particular, HUD will consider whether the recipient is serving a homeless population, whether the recipient has shown adequate progress as evidenced by the timely expenditure of funds, and whether the recipient has a successful record of assisting residents in achieving independent living initially and in maintaining it for at least one year. In determining the recipient's success in assisting residents to achieve and maintain independent living, consideration will be given to the level and type of problems of residents. HUD will also review the proposed budget for the renewal period and documentation for the recipient's share of costs for the initial renewal year.

§ 577.220 Environmental review.

(a) *Generally.* (1) The environmental effects of each application must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4320) (NEPA) and the related environmental laws and authorities listed in HUD's implementing regulations at 24 CFR parts 50 or 58, depending on who is responsible for environmental review.

(2) Environmental regulations provide for certain categorical exclusions under NEPA and set conditions under which excluded activities may be determined exempt from all environmental review requirements. In cases where proposed assistance and matching contributions solely involve operating costs for facilities or the provision of supportive services and the structures and sites involved in the projects meet the program requirements of this part, these activities are categorically excluded by regulation under part 58 of this title and may be determined fully exempt from environmental review.

(b) *Responsibility for review.* (1) HUD will perform the environmental review, in accordance with part 50 of this title, for applications received directly from private nonprofit organizations, governmental entities with special or limited purpose powers, and any governmental entities with general purpose powers found not to have the legal capacity to carry out this responsibility. HUD is not permitted to approve such applications prior to its completion of this review.

(2) Applicants that are States, metropolitan cities, urban counties, tribes, or other governmental entities with general purpose powers, and that are deemed to have the legal capacity to do so, must assume responsibility for

environmental review, decisionmaking, and action for each application for assistance in accordance with part 58 of this title. HUD is permitted to approve such applications subject to the completion of reviews by the applicant in accordance with part 58 of this title.

(3) The assumption of legal responsibility by an applicant under paragraph (b)(2) of this section does not preclude the applicant's arranging for the conduct of technical reviews by cooperating local governments having an established technical capability, *e.g.*, metropolitan cities in which the project is proposed to be located. The applicant under such arrangements must independently evaluate information submitted and assume responsibility for its accuracy, scope, and content; meet legal requirements attached to the Release of Funds by HUD; determine the completeness of the review; meet any requirements for consultation, as applicable, under 24 CFR 58.5 authorities; and assure the completion of any mitigation measures resulting from technical review or from State consultations. The arrangements described in this paragraph are in addition to the ability of an applicant to adopt relevant and adequate prior reviews conducted by HUD or other governmental entity if the reviews meet the particular requirements of the Federal environmental law or authority under which they would be adopted, and only under certain conditions (*e.g.*, a determination that no environmentally significant changes have occurred since the review was done).

(c) *Environmental review by HUD.* With regard to the environmental effects of applications for which HUD performs the review, HUD will undertake its review in accordance with the provisions of NEPA and the related authorities listed in 24 CFR 50.4. Any application subject to environmental review by HUD that requires an Environmental Impact Statement (EIS) (generally, an application that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR part 50, subpart E) will not be eligible for assistance under this part.

(d) *Environmental review by applicants.* (1) An applicant that is required under paragraph (b)(2) of this section to assume environmental review responsibility must include in its application an assurance that the applicant will assume all the environmental review responsibility that would otherwise be performed by HUD as the responsible Federal official under NEPA and related authorities listed in 24 CFR 58.5, including acceptance of jurisdiction of the Federal courts.

(2) Applicants required to assume environmental review responsibility need not complete the review until a reasonable time after selection for funding. In such cases, the award is subject to completion of the environmental responsibilities set out in 24 CFR part 58 within a reasonable time period after notification of the award. (This provision does not preclude the applicant from enclosing its environmental certification and Request for Release of Funds with its application.)

(i) Upon completion of the requirements in 24 CFR part 58, applicants must certify the completion and submit a Request for Release of Funds. This submission is not required in cases in which the applicant determines, in accordance with 24 CFR 58.34(a)(1)–(10) that its program components are totally exempt.

(ii) HUD will not release funds for transitional housing if the recipient or any other party commits transitional housing funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the grantee submits and HUD approves its Request for Release of Funds (when such submission is required).

(3) A general government applicant that believes that it does not have the legal capacity to carry out the responsibilities required by 24 CFR part 58 should contact the appropriate HUD field office for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(e) *Location of transitional housing in floodplains.* Applications for transitional housing that is to be acquired, rehabilitated, or assisted with funds under this part and that is located in any 100-year floodplain, as designated by the Federal Emergency Management Agency (FEMA), are subject to the floodplain review requirements of Executive Order 11988, Floodplain Management (May 24, 1977). Executive Order 11988 review, as referenced under parts 50 and 58 of this title, is to be performed during the environmental review.

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§ 577.225 Final selection.

(a) *Selection for funding.* In the final stage of the selection process, the highest-ranked applications will be selected for funding in accordance with their ranked order to the extent funds are available, as determined under § 577.215 of this part.

(b) *Ties between applicants.* In the event of a tie between applicants, HUD will use delivery of supportive services and the need for the project to determine which application should be selected for funding.

(c) *Procedural error.* If HUD makes a procedural error in a funding competition that, when corrected, would result in awarding sufficient points to warrant funding of an otherwise eligible applicant, HUD will award a grant as sufficient funds become available.

SUBPART E—PROGRAM REQUIREMENTS

§ 577.300 Grant agreement.

(a) *General.* The duty to provide transitional housing in accordance with the requirements of this part will be incorporated in a grant agreement executed by HUD and the recipient.

(b) *Enforcement.* HUD will enforce the obligations in the grant agreement through such action as may be appropriate.

§ 577.305 General operation.

(a) *State and local requirements.* Each recipient of assistance under this part must provide safe and sanitary housing that is in compliance with all applicable State and local housing codes, licensing requirements, and any other requirements in the jurisdiction in which the housing is located regarding the condition of the structure and the operation of the housing (except as provided in § 577.325 of this part).

(b) *Habitability standards.* Except for such variations as are proposed by the locality and approved by HUD, transitional housing must meet the following requirements:

(1) *Structure and materials.* The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from the environment.

(2) *Access.* The housing must be accessible and capable of being utilized without unauthorized use of other private properties. Structures must provide alternate means of egress in case of fire.

(3) *Space and security.* Each resident must be afforded adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.

(4) *Interior air quality.* Every room or space must be provided with natural or mechanical ventilation. Structures must

be free of pollutants in the air at levels that threaten the health of residents.

(5) *Water supply.* The water supply must be free from contamination.

(6) *Sanitary facilities.* Residents must have access to sufficient sanitary facilities that are in proper operating condition, may be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(7) *Thermal environment.* The housing must have adequate heating and/or cooling facilities in proper operating condition.

(8) *Illumination and electricity.* The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire.

(9) *Food preparation and refuse disposal.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(10) *Sanitary condition.* The housing and any equipment must be maintained in sanitary condition.

(c) *Ongoing assessment of supportive services.* Each recipient of assistance under this part must conduct an ongoing assessment of the supportive services required by the residents of the project and make adjustments as appropriate.

(d) *Residential supervision.* Each recipient of assistance under this part must provide any residential supervison determined by HUD as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate transitional housing. Residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(e) *Records and reports.* Each recipient of assistance under this part must keep any records and make any reports (including those pertaining to race, ethnicity, gender, and handicap status data) that HUD may require within the timeframe required. HUD may require recipients to monitor former residents for a reasonable time set by HUD to determine whether former residents made successful transitions to, and continue to reside in, permanent housing.

(f) *Annual assurances.* Recipients who receive assistance only for operating costs or supportive services costs must provide an annual assurance for each year such assistance is received that the project will be operated for the purpose specified in the application.

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§ 577.310 Term of commitment; repayment of grant; conversion of advances to grants.

(a) *General.* All recipients receiving assistance for acquisition, rehabilitation, or new construction must agree to operate the transitional housing in accordance with this part for a term of at least 10 years from the date of initial occupancy.

(b) *Repayment of grant.* If the facility is not operated as transitional housing for 10 years following the date of initial occupancy, HUD may require repayment of all or part of the grant used for acquisition, rehabilitation, or new construction. In order to make this determination, HUD will review documentation submitted by the recipient describing why the facility will not continue to be used for transitional housing, what the new use of the facility will be, whether an alternative site has been identified, and any other information HUD should consider.

(c) *Prevention of undue benefits.* If any facility acquired, rehabilitated, or newly constructed with funds under this part is sold or otherwise disposed of during the 20-year period following the date of initial occupancy, all proceeds from the sale or disposition should be used to provide supportive housing or for the direct benefit of low income persons. Any other proposed use of sale proceeds must be submitted to HUD with appropriate documentation for a determination whether repayment of all or a portion of the grant will be required to prevent undue benefits to the recipient.

(d) *Conversion of advances to grants.* All acquisition and rehabilitation advances awarded under this part before [insert effective date of rule] are converted to grants, which are subject to the provisions of paragraphs (b) and (c) of this section.

§ 577.315 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, recipients and project sponsors must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of transitional housing assisted under this part.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(c) *Real property acquisition requirements.* The acquisition of real property for a transitional housing project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Responsibility of recipient.* (1) The recipient must certify (*i.e.*, provide assurance of compliance) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the recipient to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid for with local public funds or funds available from other sources.

(3) The recipient must maintain records in sufficient detail to demonstrate compliance with provisions of this section.

(e) *Appeals.* A person who disagrees with the recipient's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient. A low-income person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the HUD field office.

(f) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property permanently as a direct result of acquisition, rehabilitation, or demolition for a transitional housing project assisted under this part. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(i) After notice by the recipient, project sponsor, or property owner to move permanently from the property, if the move occurs on or after the date that the recipient submits to HUD an

application for assistance that is later approved and funded;

(ii) Before the submission of the application to HUD, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the transitional housing project; or

(iii) By a tenant-occupant of dwelling unit, if any one of he following three situations occurs:

(A) The tenant moves after the execution of the agreement between the recipient and HUD and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions must include a monthly rent, including estimated average monthly utility costs, that do not exceed the greater of:

(*1*) The tenant's monthly rent before execution of the agreement between the recipient and HUD and estimated average monthly utility costs; or

(*2*) 30 percent of gross household income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either

(*1*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation or

(*2*) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (*e.g.*, the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project.

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the transitional housing project.

(3) The recipient or sponsor may, at any time, request HUD to determine whether a displacement is or would be covered by this section.

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement between the recipient and HUD.

§ 577.320 Resident rent.

Each resident of transitional housing assisted under this part must pay as rent an amount determined in accordance with section 3(a) of the United States Housing Act of 1937. Under section 3(a), each resident must pay as rent the highest of:

(a) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses);

(b) 10 percent of the family's monthly income; or

(c) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

§ 577.325 Discharge of residents.

(a) *Preemption.* No State or local law, ordinance, or regulation shall have any force or effect to the extent that it prohibits, or has the effect of prohibiting, recipients from discharging residents from transitional housing at the end of the 24-month or other HUD-approved limit on the stay of residents in the housing.

(b) *Notice to residents.* A recipient must personally serve written notice to a resident, not less than 30 calendar days before the end of the residency period for the resident, that he or she will be discharged from the transitional housing at the end of the stated period.

(c) *Resident contract.* A recipient of assistance under this part may execute a contract with each resident individual or family before admission to transitional housing providing for the length of the residency period (not to exceed 24 months or a longer time period approved by HUD) and such other terms and conditions governing the relationship between the recipient and the resident.

§ 577.330 Flood insurance.

(a) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) prohibits the approval of applications for assistance for acquisition or construction (including rehabilitation) for transitional housing located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) Recipients with transitional housing located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

§ 577.335 Applicability of Other Federal Requirements.

Each recipient of assistance under this part must comply with the following additional requirements:

(a) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to transitional housing are discussed below. Notwithstanding the permissibility of proposals that serve designated populations of homeless persons, recipients serving a designated population of homeless persons are required, within the designated population, to comply with these requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, familial status, and handicap.

(1) The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally

Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(6) If the procedures that the recipient intends to use to make known the availability of the transitional housing are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for admission to the housing, the recipient must establish additional procedures that will ensure that such persons can obtain information concerning the availability of the housing.

(7) The recipient must adopt procedures to make available information on the existence and locations of facilities and services that are accessible to persons with a handicap and maintain evidence of implementation of the procedures.

(8) The recipient must comply with the new construction accessibility requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, and the reasonable accommodation and rehabilitation accessibility requirements of section 504 as follows:

(i) All new construction must meet the accessibility requirements of 24 CFR 8.22 and, as applicable, 24 CFR 100.205.

(ii) Projects in which costs of rehabilitation are 75 percent or more of the replacement cost of the building must meet the requirements of 24 CFR 8.23(a). Other rehabilitation must meet the requirements of 24 CFR 8.23(b).

(b) *Environmental.* The National Environmental Policy Act of 1969 and the related authorities in 24 CFR parts 50 and 58 are applicable to proposals under this program.

(c) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–87 and A–102 (as set forth in 24 CFR part 85) apply to the acceptance and use of assistance under the program by governmental entities, and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations, except the requirements of 24 CFR 85.24 are modified by § 557.130 of this part, and the requirements of 24 CFR 85.31 are modified by § 557.310 of this part.

(d) *Lead-based paint.* Any residential property assisted under this part constitutes HUD-associated housing for the purposes of the Lead Based Paint Poisoning Prevention Act and is, therefore, subject to 24 CFR part 35.

(e) *Conflicts of interest.* In addition to the conflict of interest requirements in OMB Circular A–102 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient that receives assistance under the program, or who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(f) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(g) *Audit.* The financial management systems used by States, metropolitan cities, urban counties, governmental entities and tribes that are recipients under this program must provide for audits in accordance with 24 CFR part 44. Private nonprofit organization recipients are subject to the audit requirements of OMB Circular A–133. HUD may perform or require additional audits as it finds necessary or appropriate.

(h) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act do not apply to this program.

(i) *Drug-and alcohol-free facilities.* Section 402 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 requires recipients assisted under this part to administer, in good faith, a policy designed to ensure that the facility is free from the illegal use, possession, or distribution of drugs or alcohol by its residents. Recipients are also subject to the requirements of sections 5151–5160 of the Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24.

Subpart F—Administration

§ 577.400 Obligation of funds, amendments, and deobligation.

(a) *Obligation of funds.* When HUD selects an application for funding and notifies the applicant, it will obligate funds to cover the amount of the approved assistance under subpart B of this part. The recipient will be expected to carry out the transitional housing activities as proposed in the application.

(b) *Increases.* After the initial obligation of funds, HUD will not make revisions to increase the amount obligated.

(c) *Amendment.* HUD must preapprove changes to an application selected for funding.

(d) *Deobligation.* (1) HUD may deobligate all or parts of grants for acquisition, rehabilitation, or new construction:

(i) If the actual total costs of acquisition, rehabilitation, or new construction are less than the total cost anticipated in the application; or

(ii) If proposed activities for which funding was approved are not begun within nine months or residents do not begin to occupy within 18 months after grant execution.

(2)(i) HUD may deobligate the amounts for annual operating costs or supportive services in any year based on any revisions to the recipient's budget as originally approved.

(ii) HUD may deobligate the amounts for annual operating costs or supportive services costs if the proposed transitional housing operations are not begun within three months after the units are available for occupancy.

(3) The grant agreement may set forth in detail other circumstances under which funds may be deobligated, and other sanctions may be imposed.

(4) HUD may:

(i) Readvertise the availability of funds that have been deobligated under this section in a notice of fund availability under § 577.200 of this part, or

(ii) Award deobligated funds to selected applications previously

submitted in response to the most recently published notice of fund availability. Such selections will be made in accordance with subpart D of this part.

(e) *Site control.* HUD will recapture or deobligate any award for assistance under this part if the recipient is not in control of a suitable site before the expiration of one year after notification of an award, unless previously waived at the time of application under § 577.210(c) of this part. Evidence of site control is satisfied by a deed, lease, or executed contract of sale.

(f) *Repayment.* If necessary, HUD may require recipients to repay funds that have already been disbursed.

§ 577.405 Site change.

(a) *General.* A recipient may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements under this part for suitable sites.

(b) *Increased costs.* If the acquisition, rehabilitation, or new construction costs for the substitute site are greater than the amount of the grant awarded for the site specified in the application, the recipient must provide for all additional costs. If the recipient is unable to demonstrate to HUD that it is able to provide for the difference in costs, HUD may deobligate the award of assistance.

PART 578—PERMANENT HOUSING FOR HANDICAPPED HOMELESS PERSONS

2. Part 578, consisting of subparts A through F, would be revised to read as follows:

Subpart A—General

Sec.
578.1 Applicability and scope.
578.5 Definitions.
578.10 Waivers.

Subpart B—Assistance Provided

578.100 Types of assistance.
578.105 Acquisition grants.
578.110 Rehabilitation grants.
578.112 New construction grants.
578.115 Funding for supportive services costs.
578.116 Funding for operating costs.
578.117 Recipient share of supportive services and operating costs.
578.119 Administrative costs for grants.
578.120 Technical assistance.
578.125 Limitations on use of assistance.
578.130 Matching requirements.
578.135 Assistance under other HUD programs.

Subpart C—Comprehensive Housing Affordability Strategy

578.150 Comprehensive Housing Affordability Strategy.

Subpart D—Application and Selection Process

578.200 Notice of fund availability.
578.205 Selection process.
578.210 Application requirements.
578.215 Ranking criteria for applicants.
578.217 Application and selection process for renewal grants.
578.220 Environmental review.
578.225 Final selection.

Subpart E—Program Requirements

578.300 Grant agreement.
578.305 General operation.
578.310 Term of commitment; repayment of grants; conversion of advances to grants.
578.315 Displacement, relocation, and acquisition.
578.320 Resident rent.
578.325 Sites and number of residents.
578.330 Flood insurance.
578.335 Applicability of other Federal requirements.

Subpart F—Administration

578.400 Obligation of funds, amendments, and deobligation.
578.405 Site change.

Authority: Sec. 426, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 578.1 Applicability and scope.

(a) *General.* The Supportive Housing Demonstration program contained in subtitle C of title IV of the Stewart B. McKinney Homeless Assistance Act is designed to develop innovative approaches for providing supportive housing, especially to deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handicapped homeless persons. A central purpose of the program is to provide supportive housing for deinstitutionalized homeless individuals and other homeless individuals with mental disabilities. It is designed to determine:

(1) The cost of acquisition, rehabilitation, new construction, or leasing of existing structures for the provision of supportive housing;

(2) The cost of operating such housing and providing supportive services to the residents of such housing;

(3) The social, financial, and other advantages of such housing as a means of assisting homeless individuals; and

(4) The lessons that the provision of supportive housing might have for the design and implementation of housing programs that serve homeless individuals and families with special needs, particularly deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handicapped homeless persons.

(b) *Components.* The Supportive Housing Demonstration program consists of two components: Permanent housing for handicapped homeless persons and transitional housing. Part 578 of this title implements the program for permanent housing for handicapped homeless persons. Part 577 of this title implements the transitional housing program.

§ 578.5 Definitions.

As used in this part:

Applicant means the State in which permanent housing for handicapped homeless persons is to be located, or a tribe. An applicant may be the state housing finance agency (or other State agency) that customarily implements housing programs for the State and that is identified by statute to participate in housing programs in the State.

Child care services means

(1) Establishing, licensing, and operating a child care facility for residents; or

(2) (i) Contributions for the child care costs of residents to existing community child care programs and facilities; and

(ii) Counseling designed to inform the residents of public and private child care services for which they are eligible.

(3) Child care services assisted under this part, whether an on-site facility operated by the recipient or an off-site facility contributed to by the recipient, must meet any applicable State and local laws.

Comprehensive Housing Affordability Strategy (CHAS or housing strategy) means the housing strategy prepared by a jurisdiction and submitted to HUD in accordance with 24 CFR part 91.

Date of initial occupancy means the date that the permanent housing is initially occupied by a homeless person for whom assistance is provided under this part. If the assistance is for an existing homeless facility, the date of initial occupancy is the date that services are first provided to the residents of permanent housing with funding under this part.

Deinstitutionalized homeless individual means a homeless individual with mental disabilities who has been discharged or released from a mental insitution or hospital, a halfway house, or similar facility providing housing and supportive services to its residents. This term includes a homeless family, if the head of the family (or the spouse of the

head of the family) is a deinstitutionalized homeless individual.

Employment assistance means

(1) Placement of residents in jobs outside the housing or, if this is not feasible, employment of residents in the operation and maintenance of the housing;

(2) Where necessary and appropriate, payment of reasonable transportation costs of residents to places of employment outside the housing;

(3) Employment counseling; and

(4) Technical courses leading to employment.

Handicapped homeless person means a handicapped person who

(1) Is a homeless individual;

(2) Is currently not a homeless individual but who is at risk of becoming a homeless individual through eviction from permanent housing, including private dwelling units or institutions, and lacks the resources and support network needed to obtain access to housing; or

(3) Has been a resident of transitional housing assisted under the Transitional Housing program, described in 24 CFR part 577. This term may include a homeless family, if the head of the family (or the spouse of the head of the family) is a handicapped homeless person.

Handicapped or *handicapped person* means a household composed of one or more persons at least one of whom is an adult who has a disability. A person is considered to have a disability if such person is determined to have a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of a nature that the ability to live independently could be improved by more suitable housing conditions. This term includes:

(1) An indiviudal who is developmentally disabled, i.e., an individual who has a severe chronic disability that:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living; and

(G) Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual who is chronically mentally ill, *i.e.*, an individual who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (*e.g.*, by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, or recreation), and whose impairment could be improved by more suitable housing conditions.

Homeless means:

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(2) An individual or family that has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(3) This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

Homeless family with children means a homeless family that includes at least one parent or guardian and one child under the age of 18, a homeless pregnant woman, and a homeless individual in the process of securing legal custody of any person who has not attained the age of 18 years.

HUD means the U.S. Department of Housing and Urban Development.

New construction means the building of a structure where none existed or an addition to an existing structure that increases the floor area by more than 100 percent.

Operating costs means expenses that a recipient incurs for:

(1) Administration (including staff salaries), maintenance, minor or routine repair, repair and maintenance reserve, security and rental of the housing;

(2) Utilities, insurance, fuel, furnishings, and equipment for the housing;

(3) Relocation assistance under § 578.315 of this part, including payments and services; and

(4) Other costs associated with operating the permanent housing.

Permanent housing for handicapped homeless persons or *permanent housing* means housing assisted under this part:

(1) That provides community-based, long-term housing and appropriate supportive services for not more than eight handicapped homeless persons and their families (or 16 such persons and their families but only if not more than 20 percent of the units in the structure are designed for handicapped persons) and that is carried out by a project sponsor in homes designed solely for housing handicapped homeless persons, or dwelling units in a rental apartment building, a condominium project, or a cooperative project; and

(2) That has as its purpose, through providing housing and supportive services, maximizing each resident's ability to live independently within a permanent housing environment.

Private nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(1) Have a voluntary board;

(2)(i) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or

(ii) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(3) Practice nondiscrimination in the provision of assistance under the permanent housing program in accordance with the authorities described in § 578.335(a) of this part.

Project sponsor means a private nonprofit organization that an authorized official of the applicant approves as financially responsible, or a public housing agency (PHA). The project sponsor must operate the permanent housing for handicapped homeless persons, and must provide (or coordinate the provision of) supportive services to the residents of such housing.

Recipient means the applicant that executes a grant agreement with HUD. The recipient provides assistance to the project sponsor for the operation of permanent housing for handicapped homeless persons and facilitates the provision of necessary supportive services to the residents of the permanent housing.

Rehabilitation means the improvement of an existing structure or

an addition to an existing structure that does not increase the floor area by more than 100 percent. Rehabilitation does not include minor or routine repairs.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Supportive services means services provided to residents of permanent housing for the purpose of maximizing each resident's ability to live independently within a permanent housing environment. Supportive services must address the special needs of the handicapped homeless persons to be served and must assist in accomplishing the purpose of permanent housing. Supportive services may include. but are not limited to:

(1) Case management;

(2) Medical and psychological counseling and supervision;

(3) Life skills training;

(4) Nutritional counseling;

(5) Assistance in obtaining other Federal, State, and local assistance available for residents of permanent housing facilities, including mental health benefits; employment counseling; medical assistance; Veterans' benefits; and income support assistance, such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, and Food Stamps; and

(6) Other services, such as child care and employment assistance.

All or part of the supportive services may be provided directly by the recipient or the project sponsor, or by arrangement with public or private service providers.

Tribe means any Indian tribe, band, group, or nation, including Alaska Indians, Aleuts, and Eskimos and any Alaskan Native Village, of the United States, which is considered an eligible recipient under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 6701) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

§ 578.10 Waivers.

Upon completion of a determination and finding of good cause by the Assistant Secretary for Community Planning and Development, HUD may waive any provision of this part in any particular case subject only to statutory limitations. Each waiver must be in writing, and must be supported by documentation of the facts and reasons that formed the basis for the waiver. HUD will publish a notice in the Federal Register informing the public of all waivers granted under this section and containing all relevant information concerning the waiver.

Subpart B—Assistance Provided

§ 578.100 Types of assistance.

(a) *Assistance available.* Grant assistance for permanent housing is available for:

(1) Acquisition of land or structures;

(2) Rehabilitation of structures;

(3) New construction;

(4) Operating costs; and

(5) Supportive services costs, including costs for employment assistance and child care services.

(b) *Eligibility for more than one type of assistance.* Applicants may apply for more than one type of assistance.

(c) *Use of permanent housing assistance.* Assistance available for permanent housing may be used:

(1) To establish new permanent housing facilities;

(2) To expand permanent housing in order to increase the number of homeless persons served or to increase the level of supportive services provided to homeless persons;

(3) To bring permanent housing to a level that meets State and local government health and safety standards;

(4) To replace the loss of private funding for permanent housing that has ceased after completion of the funding period specified in the award of private funding up to the amount lost or the limit in § 578.117 of this part, whichever is lower; and

(5) To continue funding permanent housing where the recipient has received funding under this part for supportive services or operating costs.

(d) *Structures used for multiple purposes.* Structures use to provide permanent housing may also be used for other purposes. For example, a structure may contain facilities for an emergency shelter as well as permanent housing, may be used to provide supportive services to the public at large, or may include commercial space. Under these circumstances, however, acquisition, rehabilitation, and new construction grants will be available only in proportion to the use of the structure for permanent housing, and the funding for operating costs and supportive services costs will be available only to support the costs related to the permanent housing to be provided.

(e) *Technical assistance.* HUD may offer technical assistance, as described in § 578.120 of this part.

§ 578.105 Acquisition grants.

(a) *Use.* HUD will grant funds to recipients to:

(1) Defray the cost of the acquisition of real property selected by the recipients for use in the provision of permanent housing (including property acquired through the Single Family Property Disposition Homeless Initiative); or

(2) Repay the outstanding debt on a loan made to purchase property that will be used in the provision of permanent housing, if the property has not been used previously as supportive housing.

(b) *Existing facilities.* HUD will not provide assistance under this part for acquisition of existing facilities that currently serve the homeless, except properties leased through the Single Family Property Disposition Homeless Initiative, described in subpart E of 24 CFR part 291.

(c) *Amount.* If the applicant meets the matching share requirements at § 578.130 of this part, the maximum grant available for acquisition is the lower of:

(1) $200,000; or

(2) The total cost of the acquisition minus the applicant's contribution toward the cost of the acquisition.

(d) *Increased amounts.* In areas determined by HUD to have high acquisition and rehabilitation costs, grants of more than $200,000, but not more than $400,000, may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements for matching funds described in § 578.130 of this part are applicable to increased grants.

§ 578.110 Rehabilitation grants.

(a) *Use.* HUD will grant funds to recipients to defray the cost of rehabilitation of structures selected by the recipients for use in the provision of permanent housing.

(b) *Amount.* If an applicant meets the matching share requirements at § 578.130 of this part, the maximum grant available for rehabilitation is the lower of:

(1) $200,000; or

(2) The total cost of the rehabilitation minus the applicant's contribution toward the cost of the rehabilitation.

(c) *Increased grants.* In areas determined by HUD to have high acquisition and rehabilitation costs,

grants of more than $200,000, but not more than $400,000, may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements for matching funds described in § 578.130 of this part are applicable to increased grants.

§ 578.112 New construction grants.

(a) *Use.* HUD will grant funds to recipients to defray the cost of new construction of facilities for use in the provision of permanent housing where the applicant demonstrates that the costs associated with new construction are substantially less than the costs associated with rehabilitation or the applicant provides evidence of lack of available units that could be acquired and rehabilitated at a cost less than new construction.

(b) *Amount.* If the applicant meets the matching share requirements at § 578.130 of this part, the maximum grant available for new construction is the lower of:

(1) $200,000; or

(2) The total cost of the new construction minus the applicant's contribution toward the cost of the new construction.

(c) *Increased grants.* In areas determined by HUD to have high acquisition and rehabilitation costs, grants of more than $200,000, but not more than $400,000, may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements for matching funds described in § 578.130 of this part are applicable to increased grants.

§ 578.115 Funding for supportive services costs.

(a) *General.* HUD will provide grants to pay a portion (as described in § 578.117 of this part) of the actual supportive services costs of permanent housing.

(b) *Supportive services costs.* Costs associated with providing supportive services, approved by HUD, to residents of permanent housing for the purpose of maximizing each resident's ability to live independently within a permanent housing environment include salaries paid to providers of supportive services, the costs of conducting resident supportive services needs assessments, and any other costs directly associated with providing such services.

§ 578.116 Funding for operating costs.

(a) *General.* HUD will provide grants to pay a portion (as described in § 578.117 of this part) of the actual operating costs of permanent housing.

(b) *Operating costs.* Operating costs are those associated with the day-to-day operation of the permanent housing. They include the actual expenses that a recipient incurs for administration, including staff salaries (but not salaries of supportive services providers which will be charged to those categories); maintenance; minor or routine repair; repair and maintenance reserve; security; rental, utilities, insurance, fuel, furnishings, and equipment costs for the housing; and relocation assistance under § 578.315 of this part, including payments and services.

§ 578.117 Recipient share of supportive services and operating costs.

(a) *General.* Assistance for supportive services and operating costs will be initially available for up to 75 percent of the total cost for two years and up to 50 percent of the total cost for the next three years. Assistance may be renewed under § 578.217 of this part for a period of time not to exceed the difference between the initial funding period and ten years from the date of initial occupancy. Assistance during the renewal period may be for up to the lower of:

(1) the amount of assistance for supportive services and operating costs provided under this part for the final year of the initial funding period multiplied by the number of years in the renewal period; or

(2) 50 percent of the total cost of supportive services and operating costs during the renewal period.

(b) *Recipient share.* The recipient must show that it has cash resources to pay the percentage of the total cost of supportive services and operating costs not funded by HUD. Prior to the start of each operating year, the recipient will be required to submit documentation firmly establishing the availability of cash resources to pay the recipient's share of costs for the upcoming year. If this requirement is not met, HUD may withhold supportive services or operating cost payments.

(c) *Commitment of grant amounts.* Upon approval of an application for assistance for supportive services or operating costs, HUD will obligate amounts for a period not to exceed five operating years commencing on the date of initial occupancy. The total amount obligated will be equal to an amount necessary for five years of operation, less the recipient's share of such costs. Each year, following submission of the recipient's documentation of cash resources to pay its share of costs, HUD will make cost payments to the recipient for HUD's share of costs incurred that year. The recipient may reapply for a grant to pay a portion of the supportive services or operating costs of the permanent housing for a period not to exceed the difference between the initial funding period and ten years from the date of initial occupancy. If approved for renewal, the same commitment and payment procedures will be followed as with the initial grant.

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§ 578.119 Administrative costs for grants.

(a) *General.* Up to five percent of any grant awarded under this part may be used for the purpose of paying costs of administering the assistance.

(b) *Administrative costs.* Grant administration costs include the costs associated with accounting for the use of grant funds, preparing reports for submission to HUD, obtaining program audits, tracking clients to measure program effectiveness, and similar costs related to administering the grant after the award. This does not include the costs of carrying out activities eligible under §§ 578.105 through 578.116 of this part, since those costs are eligible as part of such activities.

§ 578.120 Technical assistance.

(a) *General.* HUD will set aside up to two percent of the amount available annually for the Supportive Housing Demonstration program to provide technical assistance under this part and part 577 in the following areas:

(1) Establishing housing facilities;

(2) Operating facilities; and

(3) Providing or obtaining supportive services for the residents.

(b) *Technical assistance.* Technical assistance is the provision of skills or knowledge by organizations or individuals to applicants (or prospective applicants) and recipients to help them plan, develop, administer, and/or evaluate their permanent housing program or specific activities more effectively. Technical assistance also includes the development, collection, processing, and dissemination of program information for local and national program management. The assistance may include, but is not limited to, written information such as papers, monographs, manuals, guides, and brochures; person-to-person exchanges; and training such as seminars, classes, workshops, and meetings.

(c) *Selection of providers.* From time to time, as HUD determines the need, HUD will advertise and competitively select providers to deliver assistance to Supportive Housing Demonstration

recipients or applicants (or prospective applicants). HUD may enter into contracts, grants, or cooperative agreements, as appropriate, to implement the technical assistance.

§ 578.125 Limitations on use of assistance.

(a) *Maintenance of effort.* No assistance received under this part (or any State or local government funds used to supplement this assistance) may be used to replace funds provided under any State or local government assistance programs previously used, or designated for use, to assist handicapped persons, homeless persons, or handicapped homeless persons.

(b) *Primarily religious organizations*—(1) *Provision of assistance.* (i) HUD will provide assistance to a recipient that will use a primarily religious organization as a project sponsor, if the primarily religious organization agrees to provide housing and supportive services in a manner that is free from religious influence and in accordance with the following principles:

(A) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(B) It will not discriminate against any person applying for housing or supportive services on the basis of religion and will not limit such housing or services or give preference to persons on the basis of religion;

(C) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of housing and supportive services.

(ii) HUD will provide assistance to a recipient that will use a primarily religious organization as a project sponsor, only if the assistance will not be used to acquire a structure to be owned by the project sponsor or to rehabilitate a structure owned by the project sponsor, except as described in paragraph (b)(2) of this section.

(2) *Acquisition and rehabilitation of structures owned by primarily religious organizations.* Acquisition and rehabilitation grants may be used to rehabilitate a structure that is owned by a primarily religious organization, only if;

(i) The structure (or portion of the structure) that is to be rehabilitated with HUD assistance has been leased to a wholly secular private nonprofit organization that will serve as the project sponsor, or to the recipient;

(ii) The HUD assistance will be provided to the project sponsor or to the recipient to make the improvements, rather than to the primarily religious organization;

(iii) The leased structure will be used exclusively for secular purposes available to all persons regardless of religions;

(iv) The lease payments provided to the primarily religious organization do not exceed the fair market rent of the structure without the rehabilitation;

(v) The cost of improvements that benefit any portion of the structure that is not used for the provision of permanent housing assisted under this Part will be allocated to and paid for by the primarily religious organization; and

(vi) The primarily religious organization agrees that if the project sponsor or the recipient does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of improvements to the project sponsor or recipient that will remit the amount to HUD.

(3) *Assistance to a wholly secular private nonprofit organization established by a primarily religious organization.* (i) If a primarily religious organization is foreclosed from direct participation as a project sponsor under the requirements set forth in paragraph (b)(2) of this section, the primarily religious organization may establish a wholly secular private nonprofit organization to serve as the project sponsor under this part.

(A) The wholly secular organization must agree to provide housing and supportive services in a manner that is free from religious influences and in accordance with the principles set forth in paragraph (b)(1)(i) of this section.

(B) The wholly secular organization may enter into a contract with the primarily religious organization to provide supportive services for the project. In such a case, the primarily religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles set forth in paragraph (b)(1)(i) of this section.

(C) The acquisition and rehabilitation grants are subject to the requirements of paragraph (b)(2) of this section.

(ii) HUD will not require the primarily religious organization to establish the wholly secular organization before the selection of the application. In such a case, the applicant must name the wholly secular organization as the project sponsor in the application. In determining whether the wholly secular organization is financially responsible, the applicant may consider the primarily religious organization's financial responsibility and its commitment to provide appropriate resources to the project sponsor upon its formation. The project sponsor's capacity to provide housing and supportive services to handicapped homeless persons may be used on the primarily religious organization's capacity and its commitment to provide appropriate resources to the project sponsor after its formation. The requirement with regard to site control, described in § 578.210(b)(12) of this part, may be satisfied if the applicant demonstrates that the primarily religious organization has site control and has a commitment to transfer control of the site to the recipient or the project sponsor following selection. Since the wholly secular organization will not be in existence at the time of the application, it will be required to demonstrate that it meets the definition of a private nonprofit organization, described in § 578.5 of this part. If such an application is selected for funding, the obligation of funds will be conditioned upon the compliance with these requirements.

§ 578.130 Matching requirements.

(a) *General.* The recipient must match the funding provided by HUD for grants for acquisition, rehabilitation, and new construction with an equal amount of resources from non-Federal sources. (Funds from Community Development Block Grants and Community Services Block Grants are considered non-Federal sources.)

(b) *Cash resources.* The matching calculation may include cash resources provided to the permanent housing by the recipient, local governments, private resources, and resident rent.

(c) *"In-kind" contributions.* The matching calculation may include the following "in-kind" contributions:

(1) Time and services contributed by volunteers to carry out the permanent housing program at the value of $10 an hour, except that donated professional services (*i.e.*, services ordinarily performed by donors for payment, such as services of health care professionals, that are equivalent to services they provide in their occupations) may be counted at the customary charge for the services provided;

(2) The value of contributions of materials or contributions of existing structures, or parts of structures, in the following manner:

(i) Contributions of materials and supplies;

(ii) A contribution of a fee ownership in a structure, to the extent of the fair market value of the structure or portion of the structure to be used for permanent housing, except to the extent funds under this part are not being used to finance acquisition of the structure; and

(iii) A contribution of a leasehold interest in a structure, to the extent of the fair rental value of the structure or portion of the structure to be used for permanent housing, except to the extent funds under this part are not being used to finance lease payments for the structure.

(d) *Maintenance of effort.* State or local government funds used in the matching contribution are subject to the maintenance of effort requirements described at § 578.125(a) of this part.

§ 578.135 Assistance under other HUD programs.

(a) *Supplemental assistance.* HUD will permit recipients to use any assistance that may be awarded under the Emergency Shelter Grants program (24 CFR part 576) or Supplemental Assistance for Facilities to Assist the Homeless program (24 CFR part 579) in conjunction with assistance awarded under this part.

(b) *Ineligible projects.* HUD will not assist a project under this part if the project involves a structure that is assisted, or residents of the structure will receive assistance, under the U.S. Housing Act of 1937; section 202 of the Housing Act of 1959; section 221(d)(3) (BMIR) or section 236 of the National Housing Act; section 101 of the Housing and Urban Development Act; section 811 of the National Affordable Housing Act; or subtitle F, title IV of the Stewart B. McKinney Homeless Assistance Act.

(c) *HUD-owned properties.* (1) HUD will make HUD-owned single family properties in its inventory available to applicants or potential applicants for acquisition grants to purchase for use as permanent housing for handicapped homeless persons. To obtain these properties, applicants may request a listing of available properties from the HUD field office, Property Disposition Branch. If an applicant wishes to purchase a property or properties, it must enter into a lease-option agreement with HUD. Under the terms of the agreement, HUD will lease the property to the applicant for up to six months for one dollar. The lease-option agreement will state that the applicant may purchase the property at a stated price during the lease period. Except as provided in paragraph (c)(2) of this section, an applicant leasing property under this section may not sublease or otherwise occupy the property until after closing of the sale. During the lease period, applicants will be responsible for all taxes, utilities, and maintenance, excluding hazard insurance. Applicants demonstrating a lease-option agreement at the time their application for assistance is filed will be regarded as having site control of the property under § 578.210(b)(12) of this part. If the option is not exercised, the lease-option agreement will expire at the end of six months, and the property will be returned to HUD's inventory, unless an extension of time is authorized by HUD.

(2) An applicant may be allowed to sublease the property to the homeless while its application for assistance under this part is pending if the applicant demonstrates to HUD's satisfaction that it has the ability, in the event its application is not approved, to continue in a lease arrangement with HUD beyond the six-month lease term under the requirements of subpart E of 24 CFR part 291.

Subpart C—Comprehensive Housing Affordability Strategy

§ 578.150 Comprehensive housing affordability strategy.

(a) *State applicants.* Assistance may not be made available under this part to a State, State housing finance agency, or other State agency unless the applicant has submitted certifications, by the official responsible for submitting the Comprehensive Housing Affordability Strategy, that the proposed activities are consistent with the housing strategy and that the jurisdiction is following its HUD-approved CHAS.

(b) *Indian tribes.* (1) Before October 1, 1992, assistance may not be made available under this part to an Indian tribe unless the tribe has either:

(i) Submitted a certification of consistency with a biennial Comprehensive Homeless Assistance Plan (CHAP), as described in 24 CFR part 90, which was approved by HUD during Fiscal Year 1991, and a certification that it is following the CHAP; or

(ii) Completed an application form that demonstrates how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing within the tribe's jurisdiction, and submitted a certification that the tribe is following the strategy outlined in the application.

(2) After October 1, 1992, assistance may not be made available under this part unless the tribe has completed an application form that demonstrates how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing within the tribe's jurisdiction, and submitted a certification that the tribe is following the strategy outlined in the application.

Subpart D—Application and Selection Process

§ 578.200 Notice of fund availability.

When funds are made available for assistance for permanent housing, HUD will publish a notice of fund availability in the **Federal Register** in accordance with the requirements of 24 CFR part 12. The notice will:

(a) Give the location for obtaining application packages, which will provide specific application requirements and guidance;

(b) Specify the time and the place for submitting completed applications;

(c) State the amount and status of funding available under the notice;

(d) Describe the factors relative to each ranking criterion contained in § 578.215 of this part, and indicate the weight or relative importance of the ranking criteria as they will be applied to the funding round announced in the notice;

(e) Specify the timing and conditions for curing technical deficiencies in a reviewed application;

(f) Provide a checklist of application submission requirements, including certifications;

(g) Announce any separate funding competitions under § 578.205(b) of this part, including the categories of permanent housing projects that will be subject to the separate funding competitions and the amount of funding available in each funding category; and

(h) Provide other appropriate program information and guidance, including purpose, authority, and eligibility.

§ 578.205 Selection process.

(a) *Selection process.* The selection process for assistance under this Part consists of the following stages:

(1) Reviewing applications for eligibility (see § 578.210 of this part);

(2) Ranking applications (see § 578.215 of this part);

(3) Final selection (see § 578.225 of this part).

(b) *Prohibition of disclosure of selection information.* The selection process for assistance under this part is subject to the prohibition of covered selection information regarding the selection process, as described in 24 CFR part 4. Applicants for or recipients of assistance who have received covered selection information may be

subject to sanctions, as determined to be appropriate.

§ 578.210 Application requirements.

(a) *Application.* To be considered for assistance under this part, applications for assistance must be filed in the form prescribed by HUD under this section, must meet the requirements of this part, and must be submitted within the time period established by HUD in the notice of funds availability under § 578.200 of this part. HUD reserves the right to reject applications where the applicant or project sponsor has an outstanding obligation to HUD that is in arrears or for which a payment schedule has not been agreed to, or whose response to an audit finding is overdue or unsatisfactory.

(b) *Application contents.* At a minimum, HUD will require applications to contain:

(1) Project sponsor data, including identity, description of past experience, and information on eligibility to receive assistance and financial responsibility. Where the project sponsor is a private nonprofit organization, the applicant must demonstrate that the project sponsor has been approved by an authorized official of the State as to financial responsibility.

(2) The type or types of assistance requested and the amount of funds requested for each type.

(3) A description of the proposed project, including information regarding:

(i) The property to be used, any proposed acquisition, rehabilitation, or new construction, and the estimated costs of those activities and how permanent housing funds are proposed to be used; the estimated value, as determined by an appraisal, of the structure if the fair market value of the structure is to be used as a source of matching funds, or the estimated value, as determined by an appraisal, of the fair rental value of the structure if that value is to be used as a source of matching funds;

(ii) The supportive services to be offered to the residents and the method by which such services will be provided, and plans for monitoring and evaluating such services; and

(iii) An estimated annual cash budget of operating costs and supportive services costs for a 5-year period.

(4) A description of the characteristics (to include racial and ethnic data) of the handicapped homeless population that will occupy the permanent housing and the number of individuals proposed to be served.

(5) An assessment of how the proposed permanent housing would meet the needs of handicapped homeless persons in the State.

(6) Evidence of the public and private resources expected to be made available to meet the recipient share and matching requirements of §§ 578.117 and 578.130 of this part.

(7) A certification from the public official responsible for submitting the Housing Affordability Strategy, described in § 578.150 of this part, stating that the proposed project is consistent with the applicable housing strategy.

(8) For applications requesting grants for acquisition, rehabilitation, or new construction, an assurance satisfactory to HUD that the project will be operated for not less than 10 years for the purpose specified in the application.

(9) For applications requesting grants for operating costs or supportive services costs but not for acquisition, rehabilitation, or new construction, an assurance satisfactory to HUD that the permanent housing will be operated for the purpose specified in the application for the year for which such assistance is provided.

(10) A letter of participation from an authorized official of the applicant containing assurances that the applicant will promptly transmit assistance to the project sponsor and will facilitate the provision of necessary supportive services to the residents of the project.

(11) A designation of the State (or tribal) agency responsible for the provision of services to handicapped persons that will assist the applicant in fulfilling the applicant's responsibilities under this part.

(12) Evidence that the applicant or project sponsor has control of the site or sites involved (*i.e.*, deed or other proof of ownership, lease, option to purchase or lease), or reasonable assurance that the applicant or project sponsor will have control of the site or sites not later than 6 months after notification of a grant. "Reasonable assurances" must be satisfied by identification of a suitable site and evidence that the applicant or project sponsor is engaged in negotiations for the purpose of gaining control of the identified site.

(13) Evidence that the resources to carry out permanent housing assisted activities will be available, and evidence that resources are available to carry out activities that are not permanent housing assisted but are essential to the acquisition, rehabilitation, or new construction of any facility that will contain permanent housing assisted programs.

(14) (i) A written statement from the unit of general local government in which the permanent housing is proposed to be located that the proposed use of the site is permissible under applicable zoning ordinances and regulations or other evidence that the use of the project site is permissible under applicable zoning ordinances and regulations; (ii) or a statement from the applicant describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, with evidence that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully and within 4 months following submission of the application; (iii) or proof that a lawsuit or a HUD complaint related to the proposed site has been filed challenging the legality of current zoning ordinances or regulations under the Fair Housing Act.

(15) An assurance that the applicant as the State will assume all the environmental review responsibility that would otherwise be performed by HUD under 24 CFR part 50 as the responsible Federal official under the National Environmental Policy Act of 1969 (NEPA) and related authorities (see § 578.220 of this part for a full discussion of the environmental review requirements for applicants under this part).

(16) If the applicant plans to provide family violence prevention or treatment services with assistance under this part, a certification that the applicant will develop and implement procedures to ensure confidentiality of records pertaining to any individual receiving such services, and that it will not make public the address or location of any permanent housing used as a family violence shelter without the written authorization of the person or persons responsible for the operation of the facility.

(17) For applications requesting grants for acquisition, rehabilitation, or new construction, evidence that the proposed sites are accessible to supportive services and transportation.

(18) Other certifications, information, or data as prescribed by HUD in the application package, including disclosures required by 24 CFR part 12.

(c) *Waiver of site control.* HUD may waive, on a case-by-case basis, the requirement that the applicant have site control where:

(1) The homeless families or individuals served own or control, or will eventually own or control, the site;

(2) The applicant does not request funds for acquisition, rehabilitation, or new construction;

(3) The applicant commits to provide comprehensive supportive services

appropriate to the needs of the population to be served; and

(4) The applicant commits to begin providing assistance to at least one homeless family or individual within 60 days of the date of execution of the grant agreement by HUD.

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§ 578.215 Ranking criteria for applicants.

(a) *In general.* Applications will be assigned a rating score and placed in ranked order, based upon the criteria described in paragraph (b) of this section and described in more detail in the Notice of Funds Availability published in the **Federal Register** at the beginning of each program funding round.

(b) *Criteria.* HUD will award points and rank applications for assistance based on the following criteria:

(1) Project sponsor capacity;

(2) Innovative quality of proposal;

(3) Need for permanent housing in the area to be served;

(4) Delivery of supportive services;

(5) Matching resources for acquisition, rehabilitation, or new construction in excess of the required minimum;

(6) Recipient share of supportive services and operating costs in excess of the required minimum;

(7) Cost effectiveness;

(8) Project quality;

(9) Other criteria as determined by the Secretary.

§ 578.217 Application and selection process for renewal grants.

(a) *General.* To be considered for renewal funding for operating costs and supportive services, recipients must submit a request for such funding, in the form specified by HUD, to the local HUD field office serving the area in which the permanent housing is located. In order to assure the uninterrupted flow of supportive services and operating funds to recipients, the request must be submitted within three months after the start of the recipient's final operating year of funding under the initial grant.

(b) *HUD review.* Staff in the local HUD field office in which the permanent housing is located will evaluate the recipient's performance in the previous year(s) against the plans projected, and committed to, in the initial application for assistance, as amended. In particular, HUD will consider whether the recipient is serving a homeless population, whether the recipient has shown adequate progress as evidenced by the timely expenditure of funds, and whether the recipient has a successful record of maximizing each resident's ability to live independently within the permanent housing. In determining the recipient's success in maximizing each resident's ability to live independently, consideration will be given to the level and type of problems of residents and the services that have been provided in response to these problems. HUD will also review the proposed budget for the renewal period and documentation for the recipient's share of costs for the initial renewal year.

§ 578.220 Environmental review.

(a) *Generally.* (1) The environmental effects of each application must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and related environmental laws and authorities listed in HUD's implementing regulations in 24 CFR part 58.

(2) Environmental regulations provide for certain categorical exclusions under NEPA and set conditions under which excluded activities may be determined exempt from all environmental review requirements. In cases where proposed assistance and matching contributions solely involve operating costs for facilities or the provisions of supportive services, and the structures and sites involved in the permanent housing meet the program requirements of this part, these activities are categorically excluded by regulation and may be determined fully exempt from environmental review.

(b) *Responsibility for review.* (1) Applicants must assume responsibility for environmental review, decisionmaking, and action for each application for assistance, in accordance with the procedural provisions of the NEPA and related environmental laws and authorities defined in HUD's implementing regulations in 24 CFR part 58.

(2) An applicant must include in its application an assurance that the applicant will assume all the environmental review responsibility that would otherwise be performed by HUD as the responsible Federal official under NEPA and related authorities listed in 24 CFR 58.5, including acceptance of jurisdiction of the Federal courts.

(3) The assumption of legal responsibility by applicants does not preclude the applicant's arranging for the conduct of technical reviews by cooperating local governments having an established technical capability, *e.g.*, metropolitan cities in which the project is proposed to be located. The applicant under such arrangements must independently evaluate information submitted and assume responsibility for its accuracy, scope, and content; meet legal requirements attached to the Release of Funds by HUD; determine the completeness of the review; meet any requirements for consultation, as applicable, under 24 CFR 58.5 authorities; and assure the completion of any mitigation measures resulting from technical review or from State consultations. The arrangements described in this paragraph are in addition to the ability of the applicant to adopt relevant and adequate prior reviews conducted by HUD or another governmental entity if the reviews meet the particular requirements of the Federal environmental law or authority under which they would be adopted, and only under certain conditions (*e.g.*, a determination that no environmentally significant changes have occurred since the review was done).

(c) *Timing of review process and restriction on release of funds.* (1) An applicant need not complete the review until a reasonable time after HUD has approved the application. In such cases, the award is subject to completion of the environmental responsibilities set out in 24 CFR part 58 within a reasonable time period after notification of the award. (This provision does not preclude the applicant from enclosing its environmental certification and Request for the Release of Funds with its application.)

(2) Upon completion of the requirements in part 58 of this title, applicants must certify the completion and submit a Request for Release of Funds. This submission is not required in cases in which the applicant determines in accordance with 24 CFR 58.34(a) (1)–(10) that its program components are totally exempt.

(3) HUD will not release funds for a permanent housing project if the recipient, project sponsor, or any other party commits permanent housing funds (*i.e.*, incurs any costs or expenditures to be paid or reimbursed with such funds) before the grantee submits and HUD approves its Request for Release of Funds (when such submission is required).

(d) *Location of permanent housing in floodplains.* Applications for permanent housing that is to be acquired, rehabilitated, or assisted with permanent housing funds and that is located in any 100-year floodplain, as designated by the Federal Emergency Management Agency (FEMA), are subject to the floodplain review requirements of Executive Order 11988, Floodplain Management (May 24, 1977). Executive Order 11988 review, as referenced under part 58 of this title, is

to be performed during the environmental review.

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§ 578.225 Final selection.

(a) *Selection for funding.* In the final stage of the selection process, the highest-ranked applications will be selected for funding in accordance with their ranked order to the extent funds are available, as determined under § 578.215 of this title.

(b) *Ties between applicants.* In the event of a tie between applicants, HUD will use delivery of supportive services and the need for the project to determine which application should be selected for funding.

(c) *Procedural errors.* If HUD makes a procedural error in a funding competition that, when corrected, would result in awarding sufficient points to warrant funding of an otherwise eligible applicant, HUD will award a grant as sufficient funds become available.

Subpart E—Program Requirements

§ 578.300 Grant agreement.

(a) *General.* The duty to provide permanent housing in accordance with the requirements of this part will be incorporated in a grant agreement executed by HUD and the recipient.

(b) *Enforcement.* HUD will enforce the obligations in the grant agreement through such action as may be appropriate.

§ 578.305 General operation.

(a) *State and local requirements.* Each recipient of assistance under this part must provide safe and sanitary housing that is in compliance with all applicable State and local housing codes, licensing requirements, and any other requirements in the jurisdiction in which the housing is located regarding the condition of the structure and the operation of the housing.

(b) *Habitability standards.* Except for such variations as are proposed by the locality and approved by HUD, permanent housing must meet the following requirements:

(1) *Structure and materials.* The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from the environment.

(2) *Access.* The housing must be accessible and capable of being utilized without unauthorized use of other private properties. Structures must provide alternate means of egress in case of fire.

(3) *Space and security.* Each resident must be afforded adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.

(4) *Interior air quality.* Every room or space must be provided with natural or mechanical ventilation. Structures must be free of pollutants in the air at levels that threaten the health of residents.

(5) *Water supply.* The water supply must be free from contamination.

(6) *Sanitary facilities.* Residents must have access to sufficient sanitary facilities that are in proper operating condition, may be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(7) *Thermal environment.* The housing must have adequate heating and/or cooling facilities in proper operating condition.

(8) *Illumination and electricity.* The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire.

(9) *Food preparation and refuse disposal.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(10) *Sanitary condition.* The housing and any equipment must be maintained in sanitary condition.

(c) *Meals.* Each recipient of assistance under this part must provide meals or meal preparation facilities for residents.

(d) *Ongoing assessment of supportive services.* Each recipient of assistance under this part must conduct an ongoing assessment of the supportive services required by the residents of the project and make adjustments as appropriate.

(e) *Residential supervision.* Each recipient of assistance under this part must provide any residential supervision determined by HUD as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate permanent housing. Residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(f) *Records and reports.* Each recipient of assistance under this part must keep any records and make any reports (including those pertaining to race, ethnicity, gender, and handicap status data) that HUD may require within the timeframe required.

(g) *Annual assurances.* Recipients who receive assistance only for operating costs or supportive services costs must provide an annual assurance for each year such assistance is received that the project will be operated for the purpose specified in the application.

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§ 578.310 Term of commitment; repayment of grants; conversion of advances to grants.

(a) *General.* All recipients receiving assistance for acquisition, rehabilitation, or new construction must agree to operate the permanent housing in accordance with this part for a term of at least 10 years from the date of initial occupancy.

(b) *Repayment of grant.* If the facility is not operated as permanent housing for 10 years following the date of initial occupancy, HUD may require repayment of all or part of the grant used for acquisition, rehabilitation, or new construction. In order to make this determination, HUD will review documentation submitted by the recipient describing why the facility will not continue to be used for permanent housing, what the new use of the facility will be, whether an alternative site has been identified, and any other information HUD should consider.

(c) *Prevention of undue benefits.* If a facility acquired, rehabilitated, or newly constructed with funds under this part is sold or otherwise disposed of during the 20-year period following the date of initial occupancy, all proceeds from the sale or disposition should be used to provide supportive housing or for the direct benefit of low income persons. Any other proposed use of sale proceeds must be submitted to HUD with appropriate documentation for a determination whether repayment of all or a portion of the grant will be required to prevent undue benefits to the recipient.

(d) *Conversion of advances to grants.* All acquisition and rehabilitation advances awarded under this part before [*insert effective date of rule*] are converted to grants, which are subject to the provisions of paragraphs (b) and (c) of this section.

§ 578.315 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, recipients and project sponsors must assure that they have taken all reasonable steps to minimize the displacement of persons

(families, individuals, businesses, nonprofit organizations, and farms) as a result of permanent housing assisted under this part.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U..S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(c) *Real property acquisition requirements.* The acquisition of real property for a permanent housing project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Responsibility of recipient.* (1) The recipient must certify (*i.e.*, provide assurance of compliance) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the recipient to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid for with local public funds or funds available from other sources.

(3) The recipient must maintain records in sufficient detail to demonstrate compliance with provisions of this section.

(e) *Appeals.* A person who disagrees with the recipient's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient. A low-income person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the HUD field office.

(f) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property permanently as a direct result of acquisition, rehabilitation, or demolition for a permanent housing project assisted under this part. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(i) After notice by the recipient, project sponsor, or property owner to move permanently from the property, if the move occurs on or after the date that the recipient submits to HUD an application for assistance that is later approved and funded;

(ii) Before the submission of the application to HUD, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the permanent housing project; or

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(A) The tenant moves after the execution of the agreement between the recipient and HUD and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions must include a monthly rent, including estimated average monthly utility costs, that do not exceed the greater of:

(*1*) The tenant's monthly rent before execution of the agreement between the recipient and HUD and estimated average monthly utility costs; or

(*2*) 30 percent of gross household income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either

(*1*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation or

(*2*) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (*e.g.*, the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project.

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the permanent housing project.

(3) The recipient or sponsor may, at any time, request HUD to determine whether a displacement is or would be covered by this section.

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement between the recipient and HUD.

§ 578.320 Resident rent.

Each resident of permanent housing assisted under this Part must pay as rent an amount determined in accordance with section 3(a) of the United States Housing Act of 1937. Under section 3(a), each resident must pay as rent the highest of:

(a) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family members, medical expenses, and child care expenses);

(b) 10 percent of the family's monthly income; or

(c) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

§ 578.325 Sites and number of residents.

(a) *Site.* Each facility must be either a home designed solely for housing handicapped persons or dwelling units in a multi-family rental building, a condominium project, or cooperative project. Not more than one home may be located on any one site, and no such home may be located on a site contiguous to another site containing such a home.

(b) *Number of residents.* (1) If the permanent housing consists of dwelling units in a multifamily rental building, condominium, or cooperative, no more than eight handicapped homeless persons and their families may reside in such structure (or 16 such persons and their families if no more than 20 percent of the units in the structure are designated for such persons).

(2) If the permanent housing is a group home, no more than eight handicapped homeless persons may reside in the group home, and the families of the handicapped homeless persons may not reside there.

(c) *Neighborhood integration.* Each permanent housing facility must be integrated into the neighborhood in which it is located. Indicators of neighborhood integration include:

(1) Plans for resident participation in neighborhood activities and institutions; and

(2) Use of a structure for permanent housing that is in keeping with the general scale of residential structures in the neighborhood.

(d) *Waiver.* HUD may waive, on a case-by-case basis, the limitation on residents contained in paragraph (b) of this section if the applicant demonstrates that local market conditions dictate the development of a larger project, and that a larger project will achieve the neighborhood integration objectives of the program within the context of the affected community.

§ 578.330 Flood insurance.

(a) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) prohibits the approval of applications for assistance for acquisition or construction (including rehabilitation) for permanent housing located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) Applicants with permanent housing located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

§ 578.335 Applicability of other Federal requirements.

Use of assistance provided under this part must comply with the following additional requirements:

(a) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to the permanent housing program are discussed below. Notwithstanding the permissibility of proposals that serve designated populations of handicapped homeless persons, recipients and project sponsors serving a designated population of handicapped homeless persons are required, within the designated population, to comply with these requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, familiar status, and handicap.

(1) The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients and project sponsors must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(6) If the procedures that the recipient or project sponsor intends to use to make known the availability of the permanent housing are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for admission to the housing, the recipient or project sponsor must establish additional procedures that will ensure that such persons can obtain information concerning availability of the housing.

(7) The recipient must adopt procedures to make available information on the existence and locations of facilities and services that are accessible to persons with a handicap and maintain evidence of implementation of the procedures.

(8) The recipient must comply with the new construction accessibility requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, and the reasonable accommodation and rehabilitation accessibility requirements of section 504 as follows.

(i) All new construction must meet the accessibility requirements of 24 CFR 8.22 and, as applicable, 24 CFR 100.205.

(ii) Projects in which costs of rehabilitation are 75 percent or more of the replacement cost of the building must meet the requirements of 24 CFR 8.23(a). Other rehabilitation must meet the requirements of 24 CFR 8.23(b).

(b) *Environmental.* The National Environmental Policy Act of 1969 and the related authorities in 24 CFR part 58 are applicable to proposals under this program.

(c) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–87 and A–102 (as set forth in 24 CFR part 85) apply to the acceptance and use of assistance under the program by governmental entities, and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations, except the requirements of 24 CFR 85.24 are modified by § 578.130 of this part, and the requirements of 24 CFR 85.31 are modified by § 578.310 of this part.

(d) *Lead-based paint.* Any residential property assisted under this part constitutes HUD-associated housing for the purposes of the Lead Based Paint Poisoning Prevention Act and is, therefore, subject to 24 CFR part 35.

(e) *Conflicts of interest.* In addition to conflict of interest requirements in OMB Circular A–102 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient, or the project sponsor, that receives assistance under the program, or who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the

activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(f) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(g) *Audit.* The financial management systems used by recipients under this program must provide for audits in accordance with 24 CFR part 44. Project sponsors are subject to the audit requirements of OMB Circular A-133. HUD may perform or require additional audits as it finds necessary or appropriate.

(h) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act do not apply to this program.

(i) *Drug and alcohol-free facilities.* Section 402 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 requires recipients and project sponsors of permanent housing assisted under this part to administer, in good faith, a policy designed to ensure that the facility is free from the illegal use, possession, or distribution of drugs or alcohol by its residents. Recipients are also subject to the requirements of sections 5151-5160 of the Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24.

Subpart F—Administration

§ 578.400 Obligation of funds, amendments, and deobligation.

(a) *Obligation of funds.* When HUD selects an application for funding and notifies the applicant, it will obligate funds to cover the amount of the approved assistance under subpart B of this part. The recipient will be expected to carry out the permanent housing activities as proposed in the application.

(b) *Increases.* After the initial obligation of funds, HUD will not make revisions to increase the amount obligated.

(c) *Amendment.* HUD must preapprove changes to an application selected for funding.

(d) *Deobligation.* (1) HUD may deobligate all or parts of grants for acquisition, rehabilitation, or new construction:

(i) If the actual total costs of acquistion, rehabilitation, or new construction are less than the total cost anticipated in the application; or

(ii) If proposed activities for which funding was approved are not begun within nine months or residents do not begin to occupy within 18 months after grant execution.

(2)(i) HUD may deobligate the amounts for annual operating costs or supportive services costs in any year based on any revisions to the recipient's budget as originally approved.

(ii) HUD may deobligate the amounts for annual operating costs or supportive services costs if the proposed permanent housing operations are not begun within three months after the units are available for occupancy.

(3) The grant agreement may set forth in detail other circumstances under which funds may be deobligated, and other sanctions may be imposed.

(4) HUD may:

(i) Readvertise the availability of funds that have been deobligated under this section in a notice of fund availability under § 578.200 of this part, or

(ii) Award deobligated funds to the selected applications previously submitted in response to the most recently published notice of fund availability. Such selections will be made in accordance with subpart D of this part.

(e) *Site control.* HUD will recapture or deobligate any award for assistance under this part if the recipient is not in control of a suitable site before the expiration of one year after notification of an award, unless previously waived at the time of application under § 578.210(c) of this part. Evidence of site control is satisfied by a deed, lease, or executed contract of sale.

(f) *Repayment of disbursed funds.* If necessary, HUD may require recipients to repay funds that have already been disbursed.

§ 578.405 Site change.

(a) *General.* A recipient may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements under this part for suitable sites.

(b) *Increased costs.* If the acquisition, rehabilitation, or new construction costs for the substitute site are greater than the amount of the grant awarded for the site specified in the application, the recipient must provide for all additional costs. If the recipient is unable to demonstrate to HUD that it is able to provide for the difference in costs, HUD may deobligate the award of assistance.

Dated: November 11, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92-45 Filed 1-3-92; 8:45 am]

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federal register

Monday
January 6, 1992

Part IV

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60-250

Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era; Final Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60-250

RIN 1215-AA73

Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era; Amendment of the Definition of Vietnam Era Veteran

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: This regulation incorporates a statutory change in the definition of "veteran of the Vietnam era" as that definition relates to Federal contractors' and subcontractors' affirmative action obligations with respect to such veterans. The regulation amends the current definition by extending the coverage cut-off date to December 31, 1994.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Annie A. Blackwell, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, room C-3325, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-9430.

SUPPLEMENTARY INFORMATION: The Veterans' Education and Employment Programs Amendments of 1991 (Pub. L. 102-16) amended numerous laws relating to veterans' benefits. Section 1 of Public Law 102-16 amends 38 U.S.C. 2011, the definitional section applicable, *inter alia*, to veterans' affirmative action coverage under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 2012).

Prior to the enactment of Public Law 102-16, eligibility under 38 U.S.C. 2012 as a "veteran of the Vietnam era" terminated on December 31, 1991. In Public Law 201-16, Congress extended the coverage cut-off date to December 31, 1994. Regulations issued by the Office of Federal Contract Compliance Programs (OFCCP) at 41 CFR part 60-250 implement 38 U.S.C. 2012. The regulation published today amends OFCCP's definition of "veteran of the Vietnam era," at 41 CFR 60-250.2, to make it consistent with Public Law 102-16.

Waiver of Proposed Rulemaking

This rule is nondiscretionary, ministerial action which merely incorporates, without change, a statutory amendment into pre-existing regulations. Publication in proposed form serves no useful purpose, and therefore is unnecessary within the meaning of the Administrative Procedure Act (5 U.S.C. 553(b)(B)). We, therefore, find good cause to waive notice of proposed rulemaking.

Effective Date

Pursuant to 5 U.S.C. 553(d) the undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that this rule is a nondiscretionary, ministerial action which merely incorporates, without change, a statutory amendment into pre-existing regulations.

Executive Order 12291

The Secretary of Labor has determined that this is not a major rule as defined in Executive Order 12291, and thus a regulatory impact analysis is not required.

Paperwork Reduction Act

Because this rule does not contain information collection requirements, it is not subject to approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 41 CFR Part 60-250

Administrative practice and procedure, Civil Rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Investigations, Veterans.

Signed at Washington, DC, on this 27th day of December, 1991.

Lynn Martin,

Secretary of Labor.

Cari M. Dominguez,

Assistant Secretary for Employment Standards.

Leonard J. Biermann,

Acting Director, Office of Federal Contract Compliance Programs.

For the reasons set forth above, 41 CFR part 60-250 is amended as set forth below.

PART 60-250—[AMENDED]

1. The authority citation for part 60-250 is revised to read as follows:

Authority: 38 U.S.C. 4211 and 4212; 29 U.S.C. 793; Executive Order 11758 (39 FR 2075, January 15, 1974; 3 CFR 1971-1975 Comp. p. 841).

2. Section 60-250.2 is amended by revising the definition "Veteran of the Vietnam era" to read as follows:

§ 60-250.2 Definitions.

* * * * *

Veteran of the Vietnam era means a person who:

(1) served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge, or

(2) was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975. No veteran may be considered to be a veteran of the Vietnam era under this paragraph after December 31, 1994.

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Monday
January 6, 1992

Part V

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 58 and 72

Permissible Exposure Limit for Diesel Particulate; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 58 and 72

RIN 1219-AA74

Permissible Exposure Limit for Diesel Particulate

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Mine Safety and Health Administration (MSHA) is in the early stages of developing a permissible exposure limit (PEL) for diesel particulate to control miners' exposure to diesel exhaust in the mining industry. This notice raises major issues which the Agency needs to consider with respect to possible regulatory action that would affect surface and underground mines in the coal, metal, and nonmetal mining sectors. The Agency seeks comment on the need for a standard, the specific regulatory language appropriate for a standard, the impact that various exposure limits would have on small businesses, and the need for recordkeeping and reporting requirements. In addition, comments are solicited on the need for a medical surveillance or screening program and on the use of respiratory equipment.

DATE: All written comments should be submitted by April 5, 1992.

ADDRESSES: Comments should be sent to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

On October 6, 1987, MSHA published in the **Federal Register** (52 FR 37381) a notice of establishment of an advisory committee on standards and regulations for diesel-powered equipment in underground coal mines. On January 5, 1988, (53 FR 169) the Secretary of Labor appointed the advisory committee to make recommendations for standards and regulations related to the approval and safe use of diesel-powered equipment in underground coal mines. The committee provided a collective expertise not otherwise available to the Secretary to address complex issues associated with mining and diesel powered equipment. The Committee submitted its recommendations in July 1988, based on its 6-month review of safety, health, and technical issues. These recommendations incorporated a three-tiered approach to reduce potential safety and health hazards.

The first approach recommended that all diesel equipment except for limited class be approved for use in underground coal mines. This approval would involve both safety (e.g., fire suppression systems) and health factors (e.g., maximum exhaust emissions).

The second approach recommended standards to address the safety aspects of the use of diesel equipment. These safety aspects included such concerns as equipment maintenance, training of mechanics, and the storage and transport of diesel fuel.

The third approach recommended standards to address the health aspects surrounding the use of such equipment. The committee emphasized the importance of the health implications of diesel exhaust relating to both the gaseous and particulate components and recommended that regulations be promulgated for monitoring and controlling the particulate. (The problem of noxious gases will be addressed in the air quality rulemaking, RIN 1219-AA48.) The committee did not recommend a specific level of exposure to diesel particulate based on the existing data and current available technology for monitoring the amount of diesel particulate in mining.

After considering the information available in 1988, the advisory committee was concerned that diesel exhaust represents a probable risk for causing human lung cancer. The committee's report recommended that MSHA regulate the use of diesels in underground coal mines to protect the health of miners by two means. First, MSHA should implement a system to control the amount of diesel particulate where diesel equipment is used underground. Second, the Secretary should set in motion a mechanism whereby a diesel particulate standard can be set.

The committee made several research proposals to the Secretary because they recognized the difficulty in implementing their recommendations based on the body of scientific knowledge that existed at the time of the report. The committee recommended that the Secretary request that the National Institute for Occupational Safety and Health (NIOSH) and the Bureau of Mines (BOM) give the highest priority to research in the development of sampling methods and devices for diesel particulate. In addition, the committee concluded that in the absence of adequate information regarding diesel particulate exposure levels at which health effects accrue, more research is needed.

After the transmission of the committee's report to the Secretary, MSHA formally requested NIOSH to perform a risk assessment for exposure to diesel particulate and requested BOM and NIOSH to develop sampling and analytical methodologies for assessing exposure to diesel particulate in mining operations. Initiatives were also undertaken to have BOM place a high priority on conducting research toward the control of diesel particulate and to have MSHA test and evaluate the technology available to measure and control diesel particulate in the mining environment, as well as characterize occupational exposures to diesel particulate.

As a result of these initiatives by the Secretary, MSHA has received additional documentation from NIOSH and BOM. This documentation includes:

1. "An Exploratory Risk Assessment of the Risk of Lung Cancer Associated with Exposure to Diesel Exhaust Based on a Study in Rats." R. Smith and L. Stayner, Division of Standards Development and Technology Transfer, NIOSH, July 2, 1990. This study employed the Armitage-Doll multi-stage model to represent the relationship between exposure to diesel exhaust and the risk of lung tumors in rodents. The results of the modeling were used to produce quantitative estimates of the risk of lung cancer in humans.

2. "Pollutant Levels in Underground Coal Mines Using Diesel Equipment." B. Cantrell, K. Rubow, W. Watts, and D. Carlson, BOM, presented at the Society of Mining Engineers, February 25, 1991. This report includes field testing data on the personal diesel exhaust aerosol sampler and an impact assessment on the effects of diesel face haulage equipment on air quality in mines.

3. "Control of Diesel Exhaust Emissions." R. Waytulonis, BOM, Proceedings of the Twenty-first Annual Institute on Coal Mining Health, Safety, and Research, 1990. This paper includes a review of conventional work practices and devices used to control diesel exhaust emission, as well as a discussion of new control techniques being tested by the Bureau of Mines.

4. "Measurement of Coal Dust and Diesel Exhaust Aerosols." K. Rubow, *et al.*, Proceedings of the VIIth International Pneumoconiosis Conference, NIOSH, 1988. This study was conducted to determine the effectiveness of size selective sampling

as a measuring technique for diesel aerosols used in underground coal mines.

5. "Development of a Personal Diesel Aerosol Sampler—Design and Performance Criteria." B. Cantrell and K. Rubow, Preprint No. 90-74, SME Annual Meeting, Salt Lake City, Utah, 1990. This paper covers the design and performance criteria used in developing a personal diesel aerosol sampler.

In addition, MSHA has participated in the development and publication of the following documents pertaining to the measurement of diesel particulate in underground mines and the determination of underground occupational exposures to diesel particulate:

1. "Development and Evaluation of a Diesel Particulate Sampler." T. Tomb, R. Haney, A. Gero, and P. Parobeck, Symposium on Respirable Dust in the Mineral Industries, October 17, 1990. Included in this paper are the results of an MSHA evaluation concerning diesel particulate samplers developed by the University of Minnesota and MSHA. The evaluation was conducted under laboratory conditions as well as in four underground coal mines where diesel-powered equipment is used.

2. "Evaluation of Personal Diesel Particulate Samplers." R. Haney, Proceedings of the 4th U.S. Mine Ventilation Symposium Berkeley, California, 1989. The report describes the evaluation of a prototype impact on sampling devices used to measure submicron particulate levels in underground coal mines.

3. "Diesel Particulate Exposures in Underground Mines." R. Haney, Preprint No. 90-40, Society for Mining, Metallurgy, and Exploration, Inc., SME Annual Meeting, Salt Lake City, Utah, 1990. This paper summarizes exposure to diesel particulate from comparative samples taken from various occupations in both coal and metal/nonmetal mining. In addition, the paper describes and evaluates the accuracy and precision of the instrumentation and analytical methods used.

Other information pertaining to the health risks associated with exposure to diesel particulate is contained in the following publications:

1. "Diesel Particulate Study." (Draft). Emission Control Technology Division, Office of Mobile Sources, Office of Air and Radiation, U.S. Environmental Protection Agency, October 1983. The purpose of this study was to provide a comprehensive assessment of the costs and benefits associated with the control of diesel particulate emissions and to recommend a regulatory strategy for such control.

2. "Air toxic Emissions and Health Risks from Mobile Sources." J. Adler and P. Carey, Air and Waste Management Association Annual Meeting, June 25, 1989. This paper focuses on all air carcinogens emitted from motor vehicles for which EPA has unit risk estimates.

To ensure that all relevant information is considered in the development of a proposed rule, the Agency is seeking further information on the risk associated with exposure to diesel particulate, the methodology available for assessing occupational exposures to diesel particulate, and the technology available or under development to reduce the concentration of diesel particulate in the mining environment. Upon completion of a comprehensive analysis of the comments and any other information received in response to this advance notice of proposed rulemaking (ANPRM), MSHA plans to publish a proposed rule to address the need to adequately assure, on the basis of the best available evidence, that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards of diesel particulate for the period of his working life. In addition to the attainment of the highest degree of health protection to the miner, other considerations in this proposed rule will be the latest available scientific data, technological and economic feasibility issues, and the Agency's experience under its health regulations.

II. Public Participation

Interested parties are encouraged to submit comments on any of the specific issues identified for public comment and on any other issues dealing with the protection of miners from the hazards of diesel particulate.

As part of this review and in addition to the statutory requirements of the Federal Mine Safety and Health Act of 1977, MSHA will also be evaluating its proposed standards in accordance with Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

III. Specific Issues Identified for Comment

As a diesel particulate standard would affect the entire mining industry, commenters should provide specific justification, based upon particular mining methods, practices, and conditions, for their positions. Comment is requested on the health effects, technological and economic feasibility, and provisions which should be considered for inclusion in a diesel particulate rule. Mine operators and other interested parties should identify and discuss both the quantifiable and nonquantifiable potential benefits and costs of compliance with various levels of diesel particulate, the methods of monitoring to measure exposure, the duration and frequency of exposure, etc. Economic information should include capital, maintenance, and ongoing costs. While MSHA requests comments on all relevant diesel particulate issues, the Agency is particularly interested in comments on the following specific issues.

1. Exposure Limit

What information is available concerning the relationship between working lifetime diesel particulate exposure and a risk of lung cancer or other biological response?

What level of risk should be used to determine a permissible exposure limit for diesel particulate?

What methology (absolute or relative risk) should be used to arrive at the risk relationship? How do factors such as smoking and exposure to other carcinogens affect this relationship?

How should the results of a quantitative risk assessment be used in arriving at an exposure limit?

Should all mines under MSHA jurisdiction be subject to the same exposure limit?

Should a short term exposure limit (STEL) as well as a time weighted average (TWA) permissible exposure limit (PEL) be established?

Should MSHA set an action level for occupational exposure to diesel exhaust? What types of provisions should be established in such a standard? To what extent would these provisions be met by current practices in the mining and other industries, and what would be their costs?

What effect does the environmental background level of diesel particulate have on diesel particulate exposure to miners?

Are there individual components of whole diesel exhaust that would better indicate the carcinogenic hazard than diesel particulate? If so, identify these components.

2. Risk Assessment

In its quantitative risk assessment, NIOSH relied on the Mauderly et al. rodent study to estimate the lung cancer risk to humans exposed to diesel exhaust. NIOSH determined that this study provided the best available data for diesel exhaust risk assessment because it had a long period of follow up, several well-chararacterized

exposure concentrations, and a large number of animals per exposure group.

Using the Armitage-Doll multistage model, NIOSH found statistically significant dose-response relationships which were determined suitable for estimating human risks at expected human doses. However, several comments and studies submitted to the Department of Labor in other rulemakings (e.g., methylene chloride and 1,3-butadiene) have raised the issue that the dose-response risk assessment approach used by the Department and other Federal agencies to estimate the carcinogenic risk to humans may be inappropriate. It is argued that this method does not take into account the metabolic differences between rodents and humans when exposed to certain toxic chemicals. These comments and studies suggest that risk extrapolated from test animals based on applied dose methods may overestimate the cancer risk.

The information acquired through this ANPRM will aid MSHA in resolving the uncertainties and in determining if species differences should be incorporated into NIOSH's model for estimating cancer risks to humans exposed to diesel exhaust.

Epidemiological Studies

To what extent do existing epidemiological studies provide a reliable estimate of the risk of lung cancer from exposure to diesel particulate? How reliable and valid are the outcome data in each study?

What limitations should be applied to interpreting the available epidemiological studies? Should any of the studies be excluded from consideration, either partially or entirely, due to inadequacies in design or in the way they were conducted?

Have the studies used an appropriate comparison population?

Does the possible presence of other carcinogens such as asbestos, arsenic, nickel, or chromium affect the reliability of the study?

Are there inconsistencies among results of epidemiological studies, and if there are, can they be explained?

Animal Studies

Are there animal studies, other than those used in the NIOSH Exploratory Risk Assessment, that should be considered to establish risk?

What parameters should be used to convert animal data to human data (i.e., body weight or surface area, age scaling methods, etc.)?

Appropriateness of Models to Assess Risk

MSHA recognizes the large areas of uncertainty which exist in applied dose risk assessment procedures. Can other forms of modeling (e.g., pharmacokinetics) reduce these uncertainties, and if so, can the reduction in uncertainty be quantified? Are additional uncertainties introduced into the risk assessment process by the use of other models? What weight should MSHA give to other modeling data in its risk assessments and why?

What consideration should be given to selecting a model when using animal data to evaluate the risk associated with exposure to diesel particulate in humans?

Would a linear nonthreshold model extrapolated from elevated exposure levels from animal studies be the most appropriate model to predict average lifetime lung cancer risks from exposure to diesel particulate in humans?

What is the best estimate of a latency period? How should latency be incorporated into the risk assessment model?

Should the risk relationship be modified in some fashion to account for cell repair or other factors?

Does the latency period vary with smoking? Does the latency period vary with total exposure or exposure rate?

Should a maximum likelihood estimate (MLE) or 95 percent upper confidence limit (UCL) estimate of risk be used?

3. Consideration of Other Information

Are there other health effects (noncarcinogenic) that result from exposure to diesel particulate?

What effect does smoking have on the risk of lung cancer in miners exposed to diesel particulate? If there is an effect, is it additive, multiplicative, or is there some other relationship? Is there information to indicate that diesel particulate works in conjunction with other contaminants?

What dermal absorption studies for diesel exhaust are available? What are the potential adverse health effects from dermal exposure alone or from a combined exposure by inhalation and dermal routes?

4. Sampling and Monitoring Methods

What methods are available to measure diesel particulate exposures in underground mines?

Are existing sampling and exposure monitoring methods sufficiently sensitive, accurate and reliable? If not, what methods would be more suitable?

What criteria should be the basis for a sampling strategy?

Would personal or area sampling be more appropriate?

MSHA solicits information on the conditions under which personal or area sampling devices should or should not be used for measuring diesel exhaust exposures.

Are there any surrogate methods available that can be used to monitor diesel particulate levels? What are the advantages, disadvantages, and relative costs for these methods?

5. Feasibility

A critical issue in the development of a diesel particulate standard is the technological feasibility of various techniques for controlling diesel particulate emissions. MSHA recognizes the wide variation in types of mines, equipment, operations, and conditions. As a result, MSHA requests both general and specific information, as well as any other relevant factors regarding the following questions. Commenters should compare alternative approaches in terms of cost and relative effectiveness.

To what extent can the design of a mine, the mining system, and the mine ventilation system be used to control exposure to diesel particulate?

If mine ventilation is used to reduce diesel particulate concentration, what would be the additional costs to reduce the concentration in increments of 100 micrograms per cubic meter of air? Would the potential costs of controlling diesel particulate affect the extent to which diesel equipment is used?

What reduction in the concentration of diesel particulate can be achieved through the use of low sulfur fuels? Does the reduction of a fuel's sulfur content reduce the hazard associated with diesel particulate? Is there a difference in the amount of particulate produced from the use of No. 1 or No. 2 diesel fuel? What is the sulfur content of fuels currently being used at diesel mines? What would be the reduction in diesel particulate if the sulfur content were reduced to 0.05 percent? When will 0.05 percent sulfur fuel be generally available to the mining industry?

What are the differences in the per-gallon costs among No. 1, No. 2, and 0.05 percent sulfur diesel fuel? How much fuel is used annually in the mining industry? What would be the economic impact on mining of using 0.05 percent sulfur fuel?

Are fuel additives available or being developed that can reduce diesel particulate emissions? What diesel particulate emission reductions can be

expected through the use of these fuel additives? Will the use of these fuel additives introduce other health hazards? If so, what specific health hazards would be introduced with the use of these fuel additives? What would be the cost of these additives? Are there any additional advantages to the use of additives, such as increased fuel efficiency?

Are there any anticipated changes in engine design that will affect diesel particulate emissions? What are these expected changes and to what extent will they reduce diesel particulate emissions? When will engines incorporating these designs be available to the mining industry?

What would be the expected increase in price of new diesel equipment or the components incorporating these anticipated changes? Would there be additional operational costs resulting from these changes?

What type of after-treatment devices are available or being developed to reduce particulate emissions from equipment with water bath scrubbers, light duty equipment such as personnel carriers and service vehicles, heavy duty equipment such as load-haul-dump vehicles and haul trucks, and stationary equipment? Will the use of these after-treatment devices introduce other health hazards? What specific health hazards would be introduced with the use of these after-treatment devices?

What diesel particulate reduction can be expected through the use of after-treatment devices? What additional maintenance requirements will be necessary as a result of adding these devices? What problems would be encountered in retrofitting existing equipment with after-treatment devices? What would be the initial cost of the devices, including installation? How long would these devices last before they needed to be replaced? What would be the costs of maintaining these devices? Would there be any loss of production specifically due to the use of these devices?

Manufacturers of engines used in over-the-road vehicles have developed and are developing after-treatment devices for the removal of diesel particulate. What after-treatment devices currently being developed for over-the-road vehicles would be applicable to the mining industry? What diesel particulate reduction can be achieved through the use of these after-treatment devices?

Is specialized training required for diesel mechanics working on equipment that uses particulate reduction technology? If specialized training is required, what type of specialized training should be required, and how extensive and costly would such training be?

What maintenance procedures are effective in reducing diesel particulate emissions from existing diesel-powered equipment? What additional maintenance procedures would be required in conjunction with anticipated developments of new diesel particulate reduction technology? How much time would be required to perform maintenance procedures? What, if any, production loss would occur during the performance of these procedures?

What is the lowest feasible exposure level of diesel exhaust that can be achieved by engineering controls and work practices alone? Are there unique conditions in certain mining settings where feasible engineering controls are not available?

Dated: December 30, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 92-178 Filed 1-3-92; 8:45 am]

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federal register

Monday
January 6, 1992

Part VI

Department of Education

34 CFR Part 81

General Education Provisions Act; Enforcement: Administrative Law Judges Office Procedural Regulations and Operating Efficiency; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 81

RIN 1880-AA35

General Education Provisions Act; Enforcement

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend part 81, subparts A and B. Part 81, entitled General Education Provisions Act; Enforcement, contains general procedural rules for proceedings before the Office of Administrative Law Judges (OALJ). The regulations in part 81 implemented amendments to part E of the General Education Provisions Act (GEPA) made by Public Law 100-297, enacted April 28, 1988. These proposed regulations are needed to clarify and refine the existing general procedural regulations and enhance the operating efficiency of the OALJ.

DATES: Comments must be received on or before February 20, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Frank J. Furey, Senior Attorney, Office of Hearings and Appeals, U.S. Department of Education, 490 L'Enfant Plaza, SW., suite 2100, Washington, DC 20219-3644.

FOR FURTHER INFORMATION CONTACT: Frank J. Furey. Telephone (202) 732-1928. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On May 5, 1989, the Secretary published final regulations in the **Federal Register** (54 FR 19512) establishing general procedural rules for proceedings before the Office of Administrative Law Judges (OALJ) authorized by the GEPA amendments and specific rules for OALJ hearings for the recovery of funds. These provisions were published to facilitate implementation of section 3501 of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law 100-297. The Secretary is proposing a number of technical, procedural, and clarifying changes to the existing regulations, which are intended to enhance the operating efficiency of the OALJ.

Summary of Proposed Changes

Subpart A—General Provisions

Subpart A contains general provisions relating to the OALJ, including proceedings designated by the Secretary to be conducted by that office.

Section 81.14 is revised to provide that administrative law judges (ALJs) are not required to grant joint requests for stays for settlement negotiations, but that the ALJs may do so, upon a finding of good cause. The Secretary believes that the ALJs should have the discretion to deny joint requests for stays for settlement negotiations, if they believe that action is appropriate.

Section 81.18 is revised to delete the provision that provides transcripts to non-Departmental parties at no cost. The change permits the Department to recover the actual costs of duplication, as it is permitted to do by law. See Federal Advisory Committee Act section 11, 5 U.S.C. app. (1988).

New § 81.20 governs the process for interlocutory appeal to the Secretary of ALJ interim rulings. Under the current regulations, interim rulings are not appealable to the Secretary. The proposed rule would permit appeals to the Secretary of an interim ruling, if the ruling involves a "controlling question of substantive or procedural law and the immediate resolution of the question will materially advance the final disposition of the proceeding." The standard of "controlling question of law" is taken from Federal Judiciary and Judicial Procedure at 28 U.S.C. 1292, "Interlocutory Decisions." Courts have interpreted the standard "controlling question of law" to include questions of substance and procedure. However, given the novelty of the procedure for this Department, the phrase "substantive or procedural" has been added to clarify that both substantive rulings and interim procedural rulings (including, but not limited to, matters of discovery, venue, and requests for stays) that meet the requirements in the proposed regulation can be appealed to the Secretary. The proposed regulatory language thus makes the intent of the rule clear to the public and the participants in the proceedings.

The discretion to accept a petition for interlocutory review of an interim ruling would reside exclusively with the Secretary. Lack of acceptance by the Secretary, within 15 days of receipt, would be deemed to be a denial of the petition.

New § 81.20 also makes clear that a petition for interlocutory review does not automatically stay the ALJ proceedings. A stay of the ALJ proceedings is discretionary with the ALJ or with the Secretary if the ruling is certified for review. However, this provision does not affect the parties' right to a review of an initial decision under redesignated § 81.32.

Subpart B—Hearings for Recovery of Funds

Subpart B contains the specific rules that apply to OALJ hearings for the recovery of funds under applicable programs.

Section 81.37 imposes a time frame of 10 days during which the authorized Departmental official must provide the ALJ with a copy of any document identified in the written notice of a disallowance decision under redesignated § 81.24(b)(2). The revision also ensures that a copy of the written application for review will be served upon the issuing Departmental official.

Section 81.41 clarifies the procedure for transmitting initial decisions of the ALJ to the Secretary and to the parties.

Section 81.42 reflects technical amendments that clarify the location for filing a petition for review by the Secretary of an initial ALJ decision. The revision clarifies the processes for the Secretary's review and modifies the provisions for service.

Section 81.43 reflects a technical amendment, deleting language prohibiting the interlocutory review of an ALJ ruling by the Secretary. This revision conforms to the addition of the proposed rule for interlocutory review at § 81.20. Section 81.43 also is revised to eliminate the provision permitting the standard of the Secretary to receive new evidence on review under "extraordinary circumstances;" the revision provides for the Secretary, for good cause shown, to remand the case to the ALJ to take further evidence, thereby directly conforming to section 452 of GEPA.

Section 81.44 explains the procedure for issuing decisions of the Secretary.

Executive Order 12291

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

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

While some small local educational agencies and small nonprofit organizations would be affected by these regulations, the Secretary does not

expect the total number of these entities to be significant in relation to the total number of entities that would be subject to these regulations. Also, the impact on small entities would be minimal.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Suite 2100, 490 L'Enfant Plaza, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Education Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 81

Enforcement, General education provisions act.

Dated: December 30, 1991.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by amending part 81 as follows:

PART 81—GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

1. The authority citation for part 81 continues to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 1234–1234i, 3474(a), unless otherwise noted.

2. Section 81.2 is amended by revising the definition of *Secretary* to read as follows:

§ 81.2 Definitions.

* * * * *

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

* * * * *

3. Section 81.14 is amended by revising paragraph (a) to read as follow:

§ 81.14 Settlement negotiations.

(a) If the parties to a case file a joint motion requesting a stay of the proceedings for settlement negotiations, or for approval of a settlement agreement, the ALJ may grant a stay of the proceedings upon a finding of good cause.

* * * * *

4. Section 81.18 is amended by revising paragraph (a) to read as follows:

§ 81.18 The record.

(a) The ALJ arranges for any evidentiary hearing or oral argument to be recorded and transcribed and makes the transcript available to the parties. Transcripts are made available to non-Departmental parties at a cost not to exceed the actual cost of duplication.

* * * * *

§§ 81.20–81.35 [Redesignated as §§ 81.30–81.45]

5. Sections 81.20 through 81.35 are redesignated as §§ 81.30 through 81.45, respectively.

6. In the list below, for each redesignated section in the left column, remove the cross-reference in the middle column and add, in its place, the cross-reference listed in the right column:

Section	Remove	Add
81.30(a)	81.21	81.31
81.31(a)	81.22	81.32
81.31(c)	81.24	81.34
81.34(a)	81.20	81.30
81.35(a)	81.21	81.31
81.35(c)	81.26	81.36
81.37(b)	81.24(b)(2)	81.34(b)(2)
81.38(b)	81.24	81.34
81.38(b)(1)(ii)	81.24	81.34
81.38(c)	81.24	81.34
81.38(c)	81.27	81.37
81.38(c)(1)	81.27(d)	81.37(d)
81.38(c)(3)	81.27	81.37
81.39(a)	81.27	81.37
81.40	81.28	81.38
81.40(c)	81.22	81.32
81.40(d)	81.23	81.33
81.45(b)(1)	81.27	81.37
81.45(b)(2)	81.34	81.44
81.45(d)	81.28	81.38
81.45(d)	81.34	81.44

7. A new § 81.20 is added to subpart A to read as follows:

§ 81.20 Interlocutory appeals to the Secretary from rulings of an ALJ.

(a) A ruling by an ALJ may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of an initial decision, grant review of a ruling upon either an ALJ's certification of the ruling to the Secretary for review, or the filing of a petition seeking review of an interim ruling by one or both of the parties, if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case.

(2) A petition may not exceed ten pages, double-spaced, and must be accompanied by a copy of the ruling and any findings and opinions relating to the ruling. The petition must be filed with the Office of Hearings and Appeals, which immediately forwards the petition to the Office of the Secretary.

(c) A copy of the petition must be provided to the ALJ at the time the petition is filed under paragraph (b)(2) of this section, and a copy of a petition or any certification must be served upon the parties by certified mail, return receipt requested. The petition or certification must reflect that service.

(d) If a party files a petition under this section, the ALJ may certify to the Secretary that review is either appropriate or inappropriate by submitting a brief statement addressing a party's petition within 10 days of the ALJ's receipt of the petition for interlocutory review. A copy of the certification must be served on all parties by certified mail, return receipt requested.

(e) A party's response, if any, to a petition or certification for interlocutory review must be filed within seven days after service of the petition or certification, and may not exceed ten pages, double-spaced, in length. A copy of the response must be served on all parties and the ALJ by hand delivery or regular mail.

(f) The filing of a request for interlocutory review does not automatically stay the proceedings. Rather, a stay during consideration of a petition for review may be granted by the ALJ if the ALJ has certified to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a request for interlocutory review within 15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the ALJ's ruling.

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1234(f)(1)).

8. Redesignated § 81.37 is amended by revising paragraphs (a) and (b), redesignating paragraphs (c) and (d) as (d) and (e), respectively, and adding a new paragraph (c) to read as follows:

§ 81.37 Application for review of a disallowance decision.

(a) If a recipient wishes to obtain review of a disallowance decision, the recipient shall file a written application for review with the Office of Hearings and Appeals, and, as required by § 81.12(b), shall serve a copy on the applicable Departmental official who made the disallowance decision.

(b) A recipient shall file an application for review not later than 30 days after the date it receives the notice of a disallowance decision.

(c) Within 10 days after receipt of a copy of the application for review, the authorized Departmental official who made the disallowance decision shall provide the ALJ with a copy of any document identified in the notice pursuant to § 81.34(b)(2).

* * * * *

9. Redesignated § 81.41 is amended by revising paragraph (c) to read as follows:

§ 81.41 Initial decision.

* * * * *

(c) The initial decision is transmitted to the Secretary by hand-delivery or Department mail, and to the parties by certified mail, return receipt requested, by the Office of Administrative Law Judges.

(Authority: 5 U.S.C. 557(c); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a)).

* * * * *

10. Redesignated § 81.42 is revised to read as follows:

§ 81.42 Petition for review of initial decision.

(a) If a party seeks to obtain the Secretary's review of the initial decision of an ALJ, the party shall file a petition for review by hand delivery or mail with the Office of Hearings and Appeals, which immediately forwards the petition to the Office of the Secretary.

(b) A party shall file a petition for review not later than 30 days after the date it receives the initial decision.

(c) If a party files a petition for review, the party shall serve a copy of the petition on the other party by hand delivery or by mail.

(d) Any written submission to the Secretary under this section must be accompanied by a statement certifying the date that the filed material was served on the other party.

(e) A petition for review of an intitial decision must contain—

(1) The identity of the initial decision for which review is sought; and

(2) A statement of the reasons asserted by the party for affirming, modifying, setting aside, or remanding the initial decision in whole or in part.

(f)(1) A party may respond to a petition for review of an initial decision by filing a statement of its views on the issues raised in the petition with the Secretary, at the address set forth in paragraph (a) of this section, not later than 15 days after the date it receives the petition.

(2) A party shall serve a copy of its statement of views on the other party by hand delivery or mail, and shall certify that it has done so pursuant to the provisions of paragraph (d) of this section.

(g)(1) The filing date for written submissions under this section is either—

(i) The date of hand delivery; or

(ii) The date of mailing.

(2) If a scheduled filing date falls on a Saturday, Sunday or a Federal holiday, the filing deadline is the next business day.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(e), 3474(a)).

11. Redesignated § 81.43 is revised to read as follows:

§ 81.43 Review by the Secretary.

(a) The Secretary's review of an initial decision is based on the record of the case, the initial decision, and any proper submissions of the parties or other participants in the case.

(b) The ALJ's findings of fact, if supported by substantial evidence, are conclusive.

(c) The Secretary may affirm, modify, set aside, or remand the ALJ's initial decision.

(1) If the Secretary modifies, sets aside, or remands an initial decision, in whole or in part, the Secretary's decision includes a statement of reasons that supports the Secretary's decision.

(2)(i) The Secretary may remand the case to the ALJ with instructions to make additional findings of fact or conclusions of law or both based on the evidence of record. The Secretary may also remand the case to the ALJ for further briefing or for clarification or revision of the initial decision.

(ii) If a case is remanded, the ALJ shall make new or modified findings of fact or conclusions of law or otherwise modify the initial decision in accordance with the Secretary's remand order.

(iii) A party may appeal a modified decision of the ALJ under the provisions of §§ 81.42, *et seq.* However, upon that review, the ALJ's new or modified findings, if supported by substantial evidence, are conclusive.

(3) The Secretary, for good cause shown, may remand the case to the ALJ to take further evidence, and the ALJ may make new or modified findings of fact and may modify the initial decision based on that new evidence. These new or modified findings of fact are likewise conclusive if supported by substantial evidence.

(Authority: 5 U S.C. 557(b); 20 U S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(d), 3474(a)).

12. Redesignated § 81.44 is amended by revising paragraph (b) to read as follows:

§ 81.44 Final decision of the Department.

* * * * *

(b) If the Secretary modifies or sets aside the ALJ's initial decision, a copy of the Secretary's decision is sent by the Office of Hearings and Appeals to the parties by certified mail, return receipt requested. The Secretary's decision becomes the final decision of the Department on the date the recipient receives the Secretary's decision.

* * * * *

[FR Doc. 92-189 Filed 1-3-92; 8:45 am]

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federal register

Monday
January 6, 1992

Part VII

Department of Education

Office of Postsecondary Education

Perkins Loan, College Work-Study and Supplemental Educational Opportunity Grant Programs; Notice

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Perkins Loan, College Work-Study and Supplemental Educational Opportunity Grant Programs; Closing Date for Institutions to File an Application for Institutional Eligibility and Certification for Participation in the Campus-Based Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to file an "Application for Institutional Eligibility and Certification" (ED Form E-40-34P, OMB #1840-0098) to participate in the Perkins Loan, College Work-Study and Supplemental Educational Opportunity Grant Programs for the 1992-93 Award Year.

SUMMARY: The Secretary invites currently ineligible institutions of higher education that filed a Fiscal Operations Report and Application to Participate (FISAP) (ED Form 646-1) in one or more of the "campus-based programs" for the 1992-93 award year to submit to the Secretary an "Application for Institutional Eligibility and Certification" and all documents required for an eligibility determination.

The campus-based programs are the Perkins Loan Program, the College Work-Study Program and the Supplemental Educational Opportunity Grant Program and are authorized by title IV of the Higher Education Act of 1965, as amended. The 1992-93 award year is July 1, 1992 through June 30, 1993.

DATES: Closing date for filing application and required documents. To participate in a campus-based program in the 1992-93 award year, a currently ineligible institution must mail or hand-deliver its "Application for Institutional Eligibility and Certification" on or before February 3, 1992. The application along with all documents required for an eligibility determination must be submitted to the Division of Eligibility and Certification at one of the addresses indicated below.

ADDRESSES: Applications and required documents delivered by mail. An institutional eligibility application and required documents delivered by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: DEC/DCMAS/OPE, room 3633, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202-4725.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Institutions that submit eligibility applications and required documents after the closing date will not be considered for funding under the campus-based programs for award year 1992-93.

Applications and Required Documents Delivered by Hand. An institutional eligibility application and required documents delivered by hand must be taken to the U.S. Department of Education, Application Control Center, room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC. The Application Control Center will accept hand-delivered applications between 8 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays and Federal holidays. An application for eligibility for the 1992-93 award year that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: Under the three campus-based programs, the Secretary allocates funds to eligible institutions of higher education. The Secretary will not allocate funds under the campus-based programs for award year 1992-93 to any currently ineligible institution unless the institution files its "Application for Institutional Eligibility and Certification" and other required documents by the closing date. If the institution submits its institutional eligibility and certification application or other required documents after the closing date, the Secretary will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 1993-94 award year.

For purposes of this notice, ineligible institutions only include:

(1) An institution that has not been designated as an eligible institution by the Secretary, but has previously filed a FISAP.

(2) An off-campus site of an eligible institution that is currently not included in the Department's eligibility certification for the eligible institution, but has been included in the institution's 1992-93 FISAP.

(3) A branch campus that is currently part of an eligible institution, but has filed its own FISAP and is seeking eligibility as a separate institution of higher education.

The Secretary wishes to advise institutions that the institutional eligibility form, "Application for Institutional Eligibility and Certification," should not be confused with the FISAP form that institutions were required to mail by October 1, 1991 for diskette or magnetic tape filers, or to transmit electronically via modem by October 1, 1991 for electronic FISAP filers, in order to be considered for funds under the campus-based programs for the 1992-93 award year.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) Perkins Loan Program, 34 CFR part 674.

(3) College Work-Study Program, 34 CFR part 675.

(4) Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(6) New Restrictions on Lobbying, 34 CFR part 82.

(7) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(8) Drug-Free Schools and Campuses, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: For information concerning designation of eligibility, contact Carol F. Sperry, Director, Division of Eligibility and Certification, Office of Postsecondary Education, U.S. Department of Education, room 3030, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202-5242. Telephone: (202) 708-4906.

For technical assistance concerning the FISAP and/or other operational procedures of the campus-based programs, contact: Robert R. Coates, Chief, Campus-Based Programs Branch, Division of Program Operations and Systems, room 4621, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202-5347. Telephone:

(202) 708-9711. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., eastern time.

Program Authority: 20 U.S.C. 1807 *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Catalog of Federal Domestic Assistance, Supplemental Educational Opportunity Grant Program, 84.007; College Work-Study Program, 84.033; Perkins Loan Program, 84.037.

Dated: December 27, 1991.

John B. Childers,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 92-191 Filed 1-3-92; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
January 3, 1992

Part VIII

Department of Transportation

Coast Guard

46 CFR Part 35

Tank Vessels: Automatic Pilot Use; Area Restrictions and Performance Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 35

[CGD 91-204]

RIN 2115-AE00

Use of Automatic Pilot: Area Restrictions and Performance Requirements

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to implement a provision of section 4114(a) of the Oil Pollution Act of 1990 (OPA 90), by defining the conditions under which, and designating the waters where, tank vessels may operate with the automatic pilot engaged. This proposed rulemaking will promote the safe operations of tank vessels in U.S. waters. Section 4114(a) also requires restrictions on operations of tank vessels with unattended machinery spaces. Regulations restricting operations with unattended machinery spaces are the subject of a separate rulemaking.

DATES: Comments must be received on or before March 6, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 91-204), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters. A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection at room B110, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LCDR Paul Jewell, Project Manager, Oil Pollution Act Office, United States Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-6746.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91-204) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or enveolope. The Coast Guard will consider all comments received during the comment period.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** If the Coast Guard determines that oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal drafters of this document are Joan Tilghman, Project Counsel, and LCDR Paul Jewell, Project Manager.

Background and Purpose

Section 4114(a) of OPA 90 requires the Coast Guard to define the conditions under, and designate the waters upon, which tank vessels may operate in U.S. navigable waters with the automatic pilot engaged. "Tank vessels" to which 46 U.S.C. 3703 applies are defined in 46 U.S.C. 2101(39) as: any "* * * vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(A) Is a vessel of the United States;

(B) Operates on the navigable waters of the United States; or

(C) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States."

Although unmanned barges are considered tank vessels, this rule does not affect barges because they are not equipped with automatic pilots. Towing vessels, including any tug which is part of an integrated tug/barge combination, are not subject to this rule because these towing vessels are not constructed or adapted to carry oil in bulk as cargo. Section 4114 specifies that this rule apply only on the navigable waters of the U.S. Navigable waters as defined in 33 U S.C. 2701 "means the waters of the United States, including the territorial sea." This definition does not encompass the waters of the Exclusive Economic Zone (EEZ). Additionally, under 46 U.S.C. 3702, "Foreign vessels on innocent passage on the navigable waters of the United States" are exempt from rules issued under the authority of 4114(a).

Among other things, the purpose of OPA 90 is to reduce the risk of the discharge of oil into the navigable waters of the United States. Section 4114(a) focuses on reducing vessel casualties and marine pollution incidents by requiring the Secretary of Transportation to issue regulations defining the conditions under which, and designating the waters where, an automatic pilot may be used on tank vessels operating in U.S. waters.

In 1977, the Coast Guard proposed a rule to prohibit the use of automatic pilots, to require that machinery spaces be manned, and to require the anchor detail set in specific U.S. waters. The Coast Guard initiated this rulemaking in an attempt to resolve the problems associated with navigation in congested and confined waters. The resulting list of specified waters was confusing to mariners because they would have been required to learn and chart new areas where the rule applied. Many commenters objected to the 1977 proposal, and the Coast Guard withdrew it after further consideration because it was determined that the rule would present an undue burden both to the mariner and the Coast Guard.

Section 4114(a) now directs the Coast Guard to establish parameters for using automatic pilots and for operating with machinery spaces unattended. The Coast Guard is proposing an approach restricting the use of automatic pilots in waters that mariners already know require additional navigational care. Tank vessel watch officers and pilots can rely on their existing knowledge of these waters and will not need to learn or chart new areas where the automatic pilot rule applies. Regulations restricting operations with unattended machinery spaces are the subject of a separate rulemaking (USCG docket #91-203).

Discussion of Proposed Amendment

The Coast Guard proposes to establish minimum performance and operating standards for using automatic pilots in U.S. navigable waters. These rules will be in addition to requirements already imposed under 33 part 164. Navigating with the automatic pilot engaged will be permitted, except in the following waters designated in title 33, Code of Federal Regulations: Traffic separation schemes (33 CFR part 167), regulated navigation areas (33 CFR part 165), shipping safety fairways (33 CFR part 166), anchorage areas (33 CFR part 110), VTS areas (33 CFR part 161), and areas within one-half mile of shore. Tank vessels transiting those waters will be required to operate under manual control without the automatic pilot engaged.

This proposed rule permits masters of tank vessels to take advantage of

modern technology, consistent with the practice of good seamanship, but also will recognize that specific U.S. waters should be navigated with an extra measure of caution. Tank vessel watch officers and pilots are familiar with these waters because these waters are generally shown on nautical charts and are already subject to regulation. The Coast Guard proposes to designate those waters as waters where an automatic pilot cannot be engaged. This approach eliminates the need for mariners to learn and chart new areas where the automatic pilot rule applies.

In a separate action to implement other OPA 90 provisions, the Coast Guard is developing regulations to require towing vessel escorts for tankers in certain waters. If those regulations become final, the Coast Guard will consider including towing vessel escort waters as areas where the automatic pilot cannot be engaged.

Requiring a helmsman to steer a tank vessel manually in designated areas will ensure quick action on the orders of the licensed bridge officer to respond to situations which require immediate corrective action. This practice should result in the avoidance of certain types of navigational hazards, and should reduce the risk of maritime casualties in U.S. waters.

Under the proposed rule, where using the automatic pilot is permitted in U.S. navigable waters, its use must conform to certain technical standards specified and recommended by the International Maritime Organziation (IMO). These IMO standards specify that automatic pilot equipment be able to provide reliable operation under prevailing conditions, be outfitted with course deviation and power failure alarms, and be capable of 3 second changover from one steering mode to another. The IMO standards govern the location, type, and adjustment features of the automatic pilot equipment. This proposed rule also specifies that a qualified helmsman must be present at the helm when a tank vessel is operating with the automatic pilot engaged.

Incorporation by Reference

The following material would be incorproated by reference in § 35.01–3: International Maritime Organization (IMO) Resolution A.342(IX) adopted November 12, 1975. Copies of the material are available for inspection where indicated under "ADDRESSES." Copies of the material are available at the addresses in § 35.01–3.

Regulatory Evaluation

The Coast Guard has determined that this proposal is not major under Executive Order 12291. There will be no cost to vessel owners in complying with this proposal because the rule will not require vessels to increase crew size or add equipment. This proposal will have no significant adverse effects on competition, employment, or other aspects of the economy; and it will not result in a major increase in costs and prices. This proposal is not significant under the Department of Transportation Regulatory Policies and Procedures for Simplification Analysis and Review of Regulations (Order 2100.5), because its cost is expected to be minimal and it does not meet any of the criteria listed in paragraph 6(a)(2) of the Order.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). "Small entities" also include small not-for-profit organizations and small governmental jurisdictions. Since there is no cost associated with this rule, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has prepared a preliminary Environmental Assessment (EA) for this action, in accordance with the Council on Environmental Quality regulations (40 CFR parts 1500–1508) and Coast Guard policy (COMDTINST M16475.1B) implementing the procedural provisions of the National Environmental Policy Act (NEPA). The EA discusses the environmental consequences of the proposed action and alternatives, including the no-action alternative. The preliminary EA is available in the docket. After receipt of all comments to this proposed rulemaking action and comments to the EA, a final decision on the need to draft an Environmental Impact Statement (EIS) will be made.

List of Subjects in 46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR part 35 as follows:

1. The authority citation for part 35 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804; Pub. L. 101–380 § 4114(a), Aug. 18, 1990, 104 Stat. 484; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Section 35.01–3 is revised to read as follows:

§ 35.01–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), or at the Oil Pollution Act Staff (G–MS), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials
1916 Race St., Philadelphia, PA 19103

ASTM D–93–80, Test Method for Flash Point by Pensky-Martens Closed Tester, 1980 ...	35.25–10
ASTM F1014–1986, Standard Specification for Flashlights on Vessels ...	35.25–20

International Maritime Organization (IMO)
4 Albert Embankment, London SE1 7SR, U.K.
IMO Resolution A.342(IX), Recommendation on Performance Standards for Automatic Pilots 35.20–45

National Fire Protection Standards (NFPA)
Batterymarch Park, Quincy, MA 02269
NFPA 306, Standard for the Control of Gas Hazards on Vessels to be Repaired, 1987... 35.01–1

3. Section 35.20–45 is revised to read as follows:

§ 35.20–45 Use of automatic pilot—T/ALL.

(a) Tank vessels may engage the automatic pilot if all of the following conditions exist:

(1) The operation and performance of the automobile pilot conforms with the standards recommended by the IMO in Resolution A.342(IX) adopted November 12, 1975;

(2) An Able Seaman or Licensed Deck Officer is present at the helm, prepared at all times to assume manual control when instructed to do so by the deck officer of the watch; and

(3) The vessel is not operating in:

(i) The areas of the traffic separation schemes specified in 33 CFR part 167 which lie within U.S. navigable waters;

(ii) A regulated navigation area specified in 33 CFR part 165;

(iii) Those portions of a shipping safety fairway specified in 33 CFR part 166 which lie within U.S. navigable waters;

(iv) An anchorage area specified in 33 CFR part 110;

(v) A Vessel Traffic Service Area specified in 33 CFR part 161; or

(vi) An area within one-half nautical mile of any U.S. shore.

Dated: December 30, 1991.

A. E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–159 Filed 1–3–92; 8:45 am]

BILLING CODE 4910–14–M

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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1700-End	(869-013-00082-0)	13.00	[5] Apr. 1, 1990
25	(869-013-00083-8)	25.00	Apr. 1, 1991
26 Parts:			
§§ 1.0-1-1.60	(869-013-00084-6)	17.00	Apr. 1, 1991
§§ 1.61-1.169	(869-013-00085-4)	28.00	Apr. 1, 1991
§§ 1.170-1.300	(869-013-00086-2)	18.00	Apr. 1, 1991
§§ 1.301-1.400	(869-013-00087-1)	17.00	Apr. 1, 1991
§§ 1.401-1.500	(869-013-00088-9)	30.00	Apr. 1, 1991
§§ 1.501-1.640	(869-013-00089-7)	16.00	Apr. 1, 1991
§§ 1.641-1.850	(869-013-00090-1)	19.00	[5] Apr. 1, 1990
§§ 1.851-1.907	(869-013-00091-9)	20.00	Apr. 1, 1991
§§ 1.908-1.1000	(869-013-00092-7)	22.00	Apr. 1, 1991
§§ 1.1001-1.1400	(869-013-00093-5)	18.00	[5] Apr. 1,1990
§§ 1.1401-End	(869-013-00094-3)	24.00	Apr. 1, 1991
2-29	(869-013-00095-1)	21.00	Apr. 1, 1991
30-39	(869-013-00096-0)	14.00	Apr. 1, 1991
40-49	(869-013-00097-8)	11.00	Apr. 1, 1991
50-299	(869-013-00098-6)	15.00	Apr. 1, 1991
300-499	(869-013-00099-4)	17.00	Apr. 1, 1991
500-599	(869-013-00100-1)	6.00	[5] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–013–00101–0)	6.50	Apr. 1, 1991
27 Parts:			
1–199	(869–013–00102–8)	29.00	Apr. 1, 1991
200–End	(869–013–00103–6)	11.00	Apr. 1, 1991
28	(869–013–00104–4)	28.00	July 1, 1991
29 Parts:			
0–99	(869–013–00105–2)	18.00	July 1, 1991
100–499	(869–013–00106–1)	7.50	July 1, 1991
500–899	(869–013–00107–9)	27.00	July 1, 1991
900–1899	(869–013–00108–7)	12.00	July 1, 1991
1900–1910 (§§ 1901.1 to 1910.999)	(869–013–00109–5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869–013–00110–9)	14.00	July 1, 1991
1911–1925	(869–013–00111–7)	9.00	[6] July 1, 1989
1926	(869–013–00112–5)	12.00	July 1, 1991
1927–End	(869–013–00113–3)	25.00	July 1, 1991
30 Parts:			
1–199	(869–013–00114–1)	22.00	July 1, 1991
200–699	(869–013–00115–0)	15.00	July 1, 1991
700–End	(869–013–00116–8)	21.00	July 1, 1991
31 Parts:			
0–199	(869–013–00117–6)	15.00	July 1, 1991
200–End	(869–013–00118–4)	20.00	July 1, 1991
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–013–00119–2)	25.00	July 1, 1991
190–399	(869–013–00120–6)	29.00	July 1, 1991
400–629	(869–013–00121–4)	26.00	July 1, 1991
630–699	(869–013–00122–2)	14.00	July 1, 1991
700–799	(869–013–00123–1)	17.00	July 1, 1991
800–End	(869–013–00124–9)	18.00	July 1, 1991
33 Parts:			
1–124	(869–013–00125–7)	15.00	July 1, 1991
125–199	(869–013–00126–5)	18.00	July 1, 1991
200–End	(869–013–00127–3)	20.00	July 1, 1991
34 Parts:			
1–299	(869–013–00128–1)	24.00	July 1, 1991
300–399	(869–013–00129–0)	14.00	July 1, 1991
400–End	(869–013–00130–3)	26.00	July 1, 1991
35	(869–013–00131–1)	10.00	July 1, 1991
36 Parts:			
1–199	(869–013–00132–0)	13.00	July 1, 1991
200–End	(869–013–00133–8)	26.00	July 1, 1991
37	(869–013–00134–6)	15.00	July 1, 1991
38 Parts:			
0–17	(869–013–00135–4)	24.00	July 1, 1991
18–End	(869–013–00136–2)	22.00	July 1, 1991
39	(869–013–00137–1)	14.00	July 1, 1991
40 Parts:			
1–51	(869–013–00138–9)	27.00	July 1, 1991
52	(869–013–00139–7)	28.00	July 1, 1991
53–60	(869–013–00140–1)	31.00	July 1, 1991
61–80	(869–013–00141–9)	14.00	July 1, 1991
81–85	(869–013–00142–7)	11.00	July 1, 1991
86–99	(869–013–00143–5)	29.00	July 1, 1991
100–149	(869–013–00144–3)	30.00	July 1, 1991
150–189	(869–013–00145–1)	20.00	July 1, 1991
190–259	(869–013–00146–0)	13.00	July 1, 1991
260–299	(869–013–00147–8)	31.00	July 1, 1991
300–399	(869–013–00148–6)	13.00	July 1, 1991
400–424	(869–013–00149–4)	23.00	July 1, 1991
425–699	(869–013–00150–8)	23.00	[6] July 1, 1989
700–789	(869–013–00151–6)	20.00	July 1, 1991
790–End	(869–013–00152–4)	22.00	July 1, 1991
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–013–00153–2)	8.50	[7] July 1, 1990
101	(869–013–00154–1)	22.00	July 1, 1991
102–200	(869–013–00155–9)	11.00	July 1, 1991
201–End	(869–013–00156–7)	10.00	July 1, 1991
42 Parts:			
1–60	(869–013–00157–5)	17.00	Oct. 1, 1991
61–399	(869–013–00158–3)	5.50	Oct. 1, 1991
400–429	(869–011–00159–9)	21.00	Oct. 1, 1990
430–End	(869–013–00160–5)	26.00	Oct. 1, 1991
43 Parts:			
1–999	(869–013–00161–3)	20.00	Oct. 1, 1991
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4000–End	(869–013–00163–0)	12.00	Oct. 1, 1991
44	(869–011–00164–5)	23.00	Oct. 1, 1990
45 Parts:			
1–199	(869–013–00165–6)	18.00	Oct. 1, 1991
200–499	(869–013–00166–4)	12.00	Oct. 1, 1991
500–1199	(869–011–00167–0)	26.00	Oct. 1, 1990
1200–End	(869–013–00168–1)	19.00	Oct. 1, 1991
46 Parts:			
1–40	(869–011–00169–6)	14.00	Oct. 1, 1990
41–69	(869–013–00170–2)	14.00	Oct. 1, 1991
70–89	(869–013–00171–1)	7.00	Oct. 1, 1991
90–139	(869–013–00172–9)	12.00	Oct. 1, 1991
140–155	(869–013–00173–7)	13.00	Oct. 1, 1991
156–165	(869–013–00174–5)	14.00	Oct. 1, 1991
166–199	(869–013–00175–3)	14.00	Oct. 1, 1991
200–499	(869–013–00176–1)	20.00	Oct. 1, 1991
500–End	(869–013–00177–0)	11.00	Oct. 1, 1991
47 Parts:			
0–19	(869–013–00178–8)	19.00	Oct. 1, 1991
20–39	(869–011–00179–3)	18.00	Oct. 1, 1990
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48 Chapters:			
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1 (Parts 52–99)	(869–011–00184–0)	19.00	Oct. 1, 1990
2 (Parts 201–251)	(869–011–00185–8)	19.00	Oct. 1, 1990
2 (Parts 252–299)	(869–011–00186–6)	15.00	Oct. 1, 1990
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49 Parts:			
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200–399	(869–011–00193–9)	21.00	Oct. 1, 1990
400–999	(869–011–00194–7)	26.00	Oct. 1, 1990
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50 Parts:			
1–199	(869–011–00197–1)	20.00	Oct. 1, 1990
200–599	(869–011–00198–0)	16.00	Oct. 1, 1990
600–End	(869–011–00199–8)	15.00	Oct. 1, 1990
CFR Index and Findings Aids	(869–013–00053–6)	30.00	Jan. 1, 1991

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1991. The CFR volume issued July 1, 1989, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1990 to June 30, 1991. The CFR volume issued July 1, 1990, should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 1992

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Editorial Note: This table replaces and corrects the table published on Thursday, January 2, 1992.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
January 2	January 17	February 3	February 18	March 3	April 1
January 3	January 21	February 3	February 18	March 3	April 2
January 6	January 21	February 5	February 20	March 6	April 5
January 7	January 22	February 6	February 21	March 9	April 6
January 8	January 23	February 7	February 24	March 9	April 7
January 9	January 24	February 10	February 24	March 9	April 8
January 10	January 27	February 10	February 24	March 10	April 9
January 13	January 28	February 12	February 27	March 13	April 13
January 14	January 29	February 13	February 28	March 16	April 13
January 15	January 30	February 14	March 2	March 16	April 14
January 16	January 31	February 18	March 2	March 16	April 15
January 17	February 3	February 18	March 2	March 17	April 16
January 21	February 5	February 20	March 6	March 23	April 20
January 22	February 6	February 21	March 9	March 23	April 21
January 23	February 7	February 24	March 9	March 23	April 22
January 24	February 10	February 24	March 9	March 24	April 23
January 27	February 11	February 26	March 12	March 27	April 27
January 28	February 12	February 27	March 13	March 30	April 27
January 29	February 13	February 28	March 16	March 30	April 28
January 30	February 14	March 2	March 16	March 30	April 29
January 31	February 18	March 2	March 16	March 31	April 30