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May 22, 1997

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Contents

Federal Register

Vol. 62, No. 99

Thursday, May 22, 1997

Agency for Health Care Policy and Research
NOTICES
Meetings:
Health Care Policy, Research, and Evaluation National Advisory Council, 28025–28026

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Food Safety and Inspection Service
See Forest Service
See Rural Utilities Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 28001–28002

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 28006

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Exotic Newcastle disease; disease status change—Costa Rica, 27938–27940
Horses and horse products; limited ports of entry—Dayton, OH, 27937–27938
Interstate transportation of animals and animal products (quarantine):
Livestock market approval for cattle, bison, horses, and swine; hog cholera regulations removed, 27930–27937
Plant-related quarantine, domestic:
Karnal bunt disease—
Regulatory flexibility and impact analysis; correction, 28108
NOTICES
Organization, functions, and authority delegations:
Hawaii Animal Import Center, HI; closure, 28002

Antitrust Division
NOTICES
National cooperative research notifications:
Advanced Lead-Acid Battery Consortium, 28065
ATM Forum, 28065–28066
Michigan Materials and Processing Institute, 28066

Arms Control and Disarmament Agency
RULES
Conflict of interests, 27947–27948

Army Department
See Engineers Corps
NOTICES
Meetings:
Science Board, 28006
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Allen Telecom Group, Inc., Decibel Products Division, 28006–28007
Multi-channel fiber optic, etc., 28007

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 28026–28027
Grants and cooperative agreements; availability, etc.:
Alcohol-exposed pregnancies prevention among high-risk women in special settings, 28027–28032
Fetal alcohol syndrome; population-based surveillance, 28032–28037
Sexually transmitted diseases prevention within managed care settings; research projects, 28037–28042
State health promotion and chronic disease prevention databases/clearinghouses, 28042–28045
Inventions, Government-owned; availability for licensing, 28045–28048
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Connaught Laboratories, Inc., 28048–28049

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Abandoned infants assistance program, 28196–28228

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Maine, 28003

Coast Guard
RULES
Drawbridge operations:
Florida, 27961–27962
Michigan, 27962–27963
Regattas and marine parades:
Harvard-Yale Regatta, 27960
Virginia is for Lovers Cup Unlimited Hydroplane Races, 27960–27961
Vocational rehabilitation and education:
Reservists' education—
Montgomery GI Bill-Selected Reserve; rates payable increase, 27963–27964
PROPOSED RULES
Drawbridge operations:
Michigan, 27990–27991
NOTICES
Committees; establishment, renewal, termination, etc.:
Cook Inlet Regional Citizens' Advisory Council, 28099
Prince William Sound Regional Citizens' Advisory Council, 28099–28100

Commerce Department
See International Trade Administration
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration
See Technology Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Costa Rica, 28004–28005

Commodity Credit Corporation
RULES
Loan and purchase programs:
Environmental Quality Incentives Program, 28258–28292

Consumer Product Safety Commission
NOTICES
Escalators; safety standard development petition, 28005

Defense Department
See Air Force Department
See Army Department
See Engineers Corps
RULES
Vocational rehabilitation and education:
Reservists' education—
Montgomery GI Bill-Selected Reserve; rates payable increase, 27963–27964
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 28005–28006
Meetings:
National Security Education Board, 28006

Education Department
RULES
Elementary and secondary education:
Elementary and Secondary Education Act; implementation, 28248–28255
PROPOSED RULES
Protection of human subjects; additional protections for children involved in research activities, 28156–28159
NOTICES
Agency information collection activities:
Proposed collection; comment request, 28008–28009
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
School-to-work opportunities initiatives; Indian program development and implementation, 28162–28174

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
School-to-work opportunities initiatives; Indian program development and implementation, 28162–28174

Employment Standards Administration
See Wage and Hour Division

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Surplus plutonium disposition, 28009–28014

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Base realignment and closure—
Sierra Army Depot, CA, 28007
Daniel Island Terminal, Charleston, SC, 28007–28008

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Materials incorporated by reference; format revision, 27968–27972
Texas, 27964–27968
PROPOSED RULES
Air programs:
Accidental release prevention—
Regulated substances and thresholds list; modifications, 27992–27996
Drinking water:
National primary drinking water regulations—
Radon-222; stakeholders meeting, 27991–27992
Radiation protection programs:
Spent nuclear fuel, high-level and transuranic radioactive wastes management and disposal; waste isolation pilot plant compliance—
Compliance criteria certification application; notification of completeness, 27996–27998
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 27998–28000
NOTICES
Meetings:
National Drinking Water Advisory Council, 28022–28023
Reports; availability, etc.:
Municipal solid waste in United States; characterization (1996 update), 28023
Superfund; response and remedial actions, proposed settlements, etc.:
Old ATC Refinery, Wilmington, NC, 28023

Executive Office of the President
See Management and Budget Office
See Presidential Documents
See Science and Technology Policy Office
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Bombardier, 27943–27944
McDonnell Douglas, 27941–27942
PROPOSED RULES
Airworthiness directives:
Saab, 27986–27989
NOTICES
Air traffic operating and flight rules, etc.:
Grand Canyon National Park; special flight rules in vicinity (SFAR No. 50-2)—
Air tour routes; correction, 28100
Committees; establishment, renewal, termination, etc.:
National Parks Overflights Working Group, 28100–28101

Federal Communications Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 28024–28025

Applications, hearings, determinations, etc.:
AT&T Wireless Services, Inc., et al., 28025

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Entergy Power Marketing Corp. et al., 28018–28020
Environmental statements; notice of intent:
Maritimes & Northeast Pipeline, L.L.C., 28020–28022
Applications, hearings, determinations, etc.:
Alabama-Tennessee Natural Gas Co., 28014
Citizens Utilities Co., 28014
Discovery Gas Transmission LLC, 28014
Florida Power Corp., 28014–28015
Koch Gateway Pipeline Co., 28015
MidAmerican Energy Co., 28015–28017
New York State Electric & Gas Corp., 28017
Northwest Pipeline Corp., 28017
Southern Natural Gas Co., 28017–28018
Williams Natural Gas Co., 28018

Federal Highway Administration
NOTICES
New York State; transportation improvement projects; programmatic Executive Order 11990 wetland finding, 28101–28102

Fish and Wildlife Service
RULES
Endangered and threatened species:
Eggert's sunflower, 27973–27978
NOTICES
Environmental statements; availability, etc.:
Waccamaw National Wildlife Refuge, SC, 28061–28062

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Fluoroquinolones and glycopeptides; extralabel use prohibition, 27944–27947
Food for human consumption:
Food labeling—
Health claims use authorization; final rules timeframe, 28230–28233
PROPOSED RULES
Food for human consumption:
Food labeling—
Health claims; soluble fiber from certain foods and coronary heart disease, 28234–28245
NOTICES
Grant and cooperative agreement awards:
University of Maryland at College Park, 28049–28052
Medical devices; premarket approval:
Bausch & Lomb Soflens66 (alphafilcon A) Visibility Tinted Contact Lens for Extended Wear, 28052–28053
Meetings:
Health profesional organizations representatives, 28053
National Center for Toxicological Research Science Advisory Board, 28053–28054
Reports; availability, etc.:
Accidental radioactive contamination of human food and animal feeds; recommendations for State and local agencies; guidance, 28054–28055
Liquid chemical germicides; premarket notification (510(k)) content and format submissions; guidance, 28055–28056
Primer on medical device interactions with magnetic resonance imaging systems; guidance, 28056

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Contact freezing of meat and meat products; liquid nitrogen use, 27940–27941

Forest Service
NOTICES
Environmental statements; notice of intent:
Tahoe National Forest, CA, 28002–28003

General Services Administration
RULES
Federal property management:
Public buildings and space—
Reimbursable work authorizations; pricing practices, 27972–27973

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health

Health Care Financing Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 28056–28057

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 28105–28107

International Trade Administration
NOTICES
Meetings:
Final antidumping regulations; seminar, 28003

Justice Department
See Antitrust Division
NOTICES
Pollution control; consent judgments:
Cottingham, Stewart I., 28064
Ramsey, Fred, et al., 28064–28065
Westinghouse Electric Corp. et al., 28065

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
See Wage and Hour Division

Land Management Bureau
NOTICES
Oil and gas leases:
New Mexico, 28062
Oklahoma, 28062
Survey plat filings:
Idaho, 28062

Withdrawal and reservation of lands:
Florida, 28062–28063

Management and Budget Office
NOTICES
Budget recissions and deferrals
Cumulative reports, 28068–28073

Minerals Management Service
RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Surety bond coverage for leases, 27948–27960

Minority Business Development Agency
NOTICES
Business development center program applications:
California et al., 28004

National Institute for Literacy
NOTICES
Meetings:
Advisory Board, 28068

National Institutes of Health
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 28057–28058
Meetings:
National Heart, Lung, and Blood Institute, 28058
National Institute of Child Health and Human Development, 28060
National Institute of Diabetes and Digestive and Kidney Diseases, 28058
National Institute of General Medical Sciences, 28059
National Institute of Neurological Disorders and Stroke, 28058
National Institute on Aging, 28059–28060
National Institute on Deafness and Other Communication Disorders, 28059
Recombinant DNA Advisory Committee, 28154
Research Grants Division special emphasis panels, 28061

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Summer flounder, etc., 27978–27985
West Coast States and Western Pacific fisheries—
Ocean salmon; correction, 28108

National Park Service
NOTICES
Native American human remains and associated funerary objects:
Neville Public Museum of Brown County, WI; inventory, 28063
Robert S. Peabody Museum of Archaeology, ME; inventory, 28063–28064

Nuclear Regulatory Commission
NOTICES
Generic letters:
Monthly operating report; revised contents, 28068

Occupational Safety and Health Administration
NOTICES
Nationally recognized testing laboratories, etc.:
Entela, Inc., 28066–28068

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Postal Service
NOTICES
Government Performance and Results Act:
Strategic plan development; correction, 28074
Meetings; Sunshine Act, 28074

Presidential Advisory Committee on Gulf War Veterans' Illnesses
NOTICES
Meetings, 28074–28075

Presidential Documents
PROCLAMATIONS
Special observances:
World Trade Week (Proc. 7004), 27927
EXECUTIVE ORDERS
Burma; prohibiting new investment in (EO 13047), 28301–28302
Committees; establishment, renewal, termination, etc.:
Bioethics Advisory Commission, National; extension
Correction, 28109
ADMINISTRATIVE ORDERS
Bosnia and Herzegovina:
Compliance on withdrawal of foreign forces and terminating cooperation with Iran, 28295
Soviet Union, New Independent States of the Former; assistance program, 28297

President's Commission on Critical Infrastructure Protection
NOTICES
Meetings, 28074

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Railroad Retirement Board
PROPOSED RULES
Railroad Retirement Act:
Family relationships and social security overall minimum guarantee provision; stepchild annuity eligibility requirements, 27989–27990

Research and Special Programs Administration
NOTICES
Meetings:
Pipeline risk management demonstration program; electronic town meeting, 28102–28103
Pipeline safety; waiver petitions:
Northern Eclipse, Inc., 28103–28104
Pine Needle LNG Co., 28104

Rural Utilities Service
RULES
Electric loans:
Electric borrowers whose net worth exceeds 110 percent of outstanding loans; exemptions of operational controls; timing of notification to borrowers, 27929–27930

Science and Technology Policy Office
NOTICES
Meetings:
President's Committee of Advisors on Science and Technology, 28023–28024

Securities and Exchange Commission
RULES
Investment advisers:
Advisers between Commission and states; reallocation of responsibilities, 28112–28151
NOTICES
Securities:
Suspension of trading—
Combined Companies International Corp., 28081
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 28081–28082
Chicago Board Options Exchange, Inc., 28082–28085
Delta Clearing Corp., 28085–28086
National Association of Securities Dealers, Inc., 28086–28091
National Securities Clearing Corp., 28091
New York Stock Exchange, Inc., 28092–28093
Pacific Stock Exchange, Inc., 28093–28096
Applications, hearings, determinations, etc.:
Public utility holding company filings, 28075–28077
Royce Global Trust, Inc., et al., 28077–28079
USLIFE Income Fund, Inc., et al., 28079–28080

Selective Service System
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 28096
Privacy Act:
Computer matching programs, 28096–28097

State Department
NOTICES
Arms Export Act and Export Administration of 1979:
Chemical and biological weapons; imposition of proliferation sanctions on foreign entities and persons, 28304
Arms Export Control Act determinations, 28097, 28302
Meetings:
Shipping Coordinating Committee, 28097–28098

Surface Transportation Board
NOTICES
Railroad services abandonement:
Union Pacific Railroad Co., 28104–28105

Technology Administration
NOTICES
Meetings:
Federal Key Management Infrastructure Federal Information Processing Standard Development Technical Advisory Committee, 28004

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Meetings:
Industry Functional Advisory Committee, 28098

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Meetings:
Partnership Council, 28098–28099

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
RULES
Vocational rehabilitation and education:
Reservists' education—
Montgomery GI Bill-Selected Reserve; rates payable increase, 27963–27964

Wage and Hour Division
RULES
Service contracts for maintenance of public buildings; nondisplacement of qualified workers under certain contracts, 28176–28193

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 28112–28151

Part III
Department of Health and Human Services, National Institute of Health, 28154

Part IV
Department of Education, 28156–28159

Part V
Department of Education, 28162–28174

Part VI
Department of Labor, Employment and Training Administration, and Wage and Hour Division, 28176–28193

Part VII
Department of Health and Human Services, Children and Families Administration, 28196–28228

Part VIII
Department of Health and Human Services, Food and Drug Administration, 28230–28245

Part IX
Department of Education, 28248–28255

Part X
Department of Agriculture, Commodity Credit Corporation, 28258–28292

Part XI
The President, 28293–28297

Part XII
The President, 28299–28302

Part XIII
State Department, 28304

Reader Aids

Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

7004 27927

Executive Orders:

13046 28108
13047 28301

Administrative Orders:

Presidential Determinations

No. 97–22 of May 5, 1997 28295
No. 97–23 of May 5, 1997 28297

7 CFR

301 28108
1466 28258
1710 27929

9 CFR

51 27930
56 27930
71 27930
75 27930
76 27930
78 27930
80 27930
85 27930
92 27937
94 27937
318 27940

14 CFR

39 (2 documents) 27941, 27943

Proposed Rules:

39 (2 documents) 27986, 27987

17 CFR

275 28112
279 28112

20 CFR

Proposed Rules:

222 27989
229 27989

21 CFR

101 28230
530 27944

Proposed Rules:

101 28234

22 CFR

606 27947

29 CFR

9 28175

30 CFR

250 27948
251 27948
256 27948
281 27948
282 27948

33 CFR

100 (2 documents) 27960
117 (2 documents) 27961, 27962

Proposed Rules:

117 27990

34 CFR

200 28248
299 28248

Proposed Rules:

97 28156

38 CFR

21 (3 documents) 27963

40 CFR

52 (2 documents) 27964, 27968

Proposed Rules:

Ch. I 27991
68 27992
194 27996
300 27998

41 CFR

101–21 27972

50 CFR

17 27973
648 27978
660 28301

Federal Register
Vol. 62, No. 99
Thursday, May 22, 1997

Presidential Documents

Title 3—

The President

Proclamation 7004 of May 19, 1997

World Trade Week, 1997

By the President of the United States of America

A Proclamation

Two statistics sum up both the challenge and the promise of today's dynamic global economy: 95 percent of the world's consumers live outside the United States, and U.S. exports generated more than $830 billion in sales in 1996. The theme of this year's World Trade Week, ''Make Locally, Sell Globally,'' exhorts American businesses to take advantage of the enormous commercial potential of the international marketplace, and we are poised to do so.

Over the past 4 years, trade has spurred more than a quarter of our overall domestic economic growth. During this period, the United States under the leadership of the Office of the U.S. Trade Representative signed more than 200 new trade agreements and is once again the world's leading exporter. In recent months, we have concluded historic agreements in the World Trade Organization that opened up the world telecommunications services market to U.S. firms. We also have negotiated a pact that will eliminate tariffs on information technology products by the year 2000. Together, these agreements offer American business better access to markets representing more than $1 trillion in goods and services and are models for further market-opening initiatives.

The North America Free Trade Agreement (NAFTA) has not only increased trade with our member partners to a level of $425 billion annually, but also has provided greater stability to the global economy. We are committed to building on this success by achieving a Free Trade Area of the Americas, and we look toward a comprehensive trade agreement with Chile as the next concrete step in this direction.

Selling globally also requires vigorous trade enforcement efforts, such as those we initiated recently by improving the protection of intellectual property rights in China and some 20 other countries around the world. Our ongoing efforts to eliminate trade barriers in Asia have already paid dividends—for example, U.S. exports to Japan have grown by more than 40 percent since 1993. We will also continue to strictly enforce existing trade laws to ensure that imported goods in U.S. markets do not enjoy an unfair advantage over those produced by U.S. companies and workers.

We are committed to helping all U.S. businesses continue to succeed—not only by opening markets, but also by assisting U.S. exporters. My Administration, through the efforts of the Trade Promotion Coordinating Committee, has developed a National Export Strategy to help small- and medium-size companies sell globally to realize their export potential. Our nationwide network of U.S. Export Assistance Centers combines under one roof the services of the Department of Commerce, the Small Business Administration, the U.S. Export-Import Bank, and other agencies to improve business access to trade information and financing. Over the past 4 years, this network has more than doubled the amount of export sales it facilitates. Our finance agencies, the U.S. Export-Import Bank, the Overseas Private Investment Corporation, and the Trade and Development Agency, also help American businesses compete on a level playing field in this increasingly competitive world economy.

We can be proud of this record of achievement, but we must build on it. Fair trade and open markets create stable economies in which democracy can take root and flourish. The United States alone has the legacy, the resources, and the responsibility to lead the world in this endeavor, and we must continue to do so.

As we observe World Trade Week, 1997, I am confident that, working together, we can sustain America's leadership in the global economy, generate millions of new jobs, and improve the quality of life for all our people.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 18 through May 24, 1997, as World Trade Week. I invite the people of the United States to observe this week with ceremonies, activities, and programs that celebrate the potential of international trade.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

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Rules and Regulations

Federal Register
Vol. 62, No. 99
Thursday, May 22, 1997

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

Exemptions of RUS Operational Controls under Section 306E of the Rural Electrification Act; Timing of Notification to Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: Section 306E of the Rural Electrification Act of 1936, as amended, directs The Rural Utilities Service (RUS) to minimize approval rights, requirements and prohibitions imposed on the operations of electric borrowers whose net worth exceeds 110 percent of the outstanding loans made or guaranteed to the borrower by RUS. Prior to today's amendment, RUS regulations implementing this provision included a requirement that RUS notify borrowers no later than May 1 of each year whether they meet the 110 percent test in order to qualify for the exemptions listed in the rule. Most of the information needed to determine a borrower's exemption status is contained in Financial and Statistical Reports that each borrower submits to RUS no later than March 1 each year. Because of the short time available to compile the data, RUS has had difficulty meeting the May 1 notification date. Today's rule pushes the date back to July 1. The rule makes no substantive changes to the ''110 percent rule.'' RUS is simply changing the timing of the notification to borrowers. The July 1 date is the same date that RUS is required to notify borrowers of exemption from RUS approval of certain investments. RUS believes that informing borrowers of their exemption status under both rules at the same time will reduce administrative costs to borrowers and to the agency.

DATES: This rule is effective May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, U.S. Department of Agriculture, Rural Utilities Service, Room 4032-S, 1400 Independence Avenue, SW, STOP 1522, Washington, DC 20250–1500. Telephone: 202–690–1078. FAX: 202–720–4120. E-mail: sarnold@rus.usda.gov.

SUPPLEMENTARY INFORMATION: This regulatory action makes no substantive change to RUS regulations and, therefore, has not been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for which RUS published a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b), or any other law. Therefore, the Regulatory Flexibility Act does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in Sec. 3 of the Executive Order.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Information Collection and Recordkeeping Requirements

This rule contains no recordkeeping or reporting burdens requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 31, as amended).

Background

Section 306E of the Rural Electrification Act of 1936, as amended, (7 U.S.C. 936e) directs RUS to minimize approval rights, requirements and prohibitions imposed on the operations of electric borrowers whose net worth exceeds 110 percent of the outstanding loans made or guaranteed to the borrower by RUS. Prior to today's amendment, RUS regulations required RUS to notify borrowers no later than May 1 of each year whether they meet the 110 percent test in order to qualify for the exemptions listed in the rule. See 7 CFR 1710.7(b)(3). The 110 percent rule was last revised December 29, 1995, at 60 FR 67401, but the date of the notification was not changed at that time.

Most of the information required to prepare the notification is in the Financial and Statistical Report that each borrower submits annually to RUS (RUS Form 7 for distribution borrowers, or Form 12 for power supply borrowers). This report is not due to RUS until March 1. The short time period for compiling the data has stressed agency resources, and RUS has had difficulty meeting the May 1 notification date. Today's rule pushes the notification date back to July 1. No changes are being made to the qualifications for the exemption or to the nature of the exemption itself. Borrowers who are notified that they are exempt will remain exempt until they are notified otherwise by RUS.

Another RUS rule, Investments, Loans, and Guarantees by Electric Borrowers, 7 CFR 1717 subpart N, provides in § 1717.656(e) that RUS will notify borrowers by July 1 of any change in their status with respect to exemption from RUS approval of certain investments. While the 110 percent rule and the investment rule deal with different exemptions, RUS believes that informing borrowers of their exemption status under both rules at the same time will reduce administrative costs to borrowers and to the government.

Because this rule makes no change to RUS rules other than a change in the notification date, RUS has determined that no period for public comment is

needed, and the change in date is in effect immediately.

List of Subjects in 7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Rural areas.

For the reasons set out in the preamble, and under the authority of 7 U.S.C. 901 *et seq.*, RUS amends 7 CFR part 1710 as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); Pub. L. 99–591, 100 Stat. 3341; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. Section 1710.7 is amended by revising paragraph (b)(3) to read as follows:

§ 1710.7 Exemptions of RUS operational controls under section 306E of the RE Act.

* * * * *

(b) * * *

(3) By no later than July 1 of each year, RUS will notify each borrower in writing of its exemption status. If the borrower's net worth to RUS debt ratio exceeds 110 percent based on the most recent year-end data, the borrower will be exempt from the operational controls exempted under paragraph (c) of this section until subsequently notified in writing by RUS that it is no longer exempt.

* * * * *

Dated: May 15, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–13424 Filed 5–21–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 51, 56, 71, 75, 76, 78, 80, and 85

[Docket No. 96–041–2]

Interstate Movement of Livestock; Approved Livestock Facilities, Hog Cholera Provisions, and Livestock Identification

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the interstate movement of livestock by combining the provisions for the approval of livestock markets for cattle and bison, horses, and swine into a single section. These changes are the result of a comprehensive review of the Animal and Plant Health Inspection Service's regulations, programs, and policies regarding livestock markets and stockyards. We are also removing the regulations that restrict the movement of swine and swine products from areas quarantined for hog cholera and that provide for the payment of compensation to the owners of swine destroyed because of hog cholera. We are removing the hog cholera regulations because the United States has been free of hog cholera since 1978 and import requirements have proven adequate to prevent the reintroduction of the disease into this country. These actions will eliminate unnecessary or duplicative regulations and remove the implication that hog cholera has not yet been eradicated in the United States.

EFFECTIVE DATE: June 23, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Davis, Senior Staff Veterinarian, Surveillance and Animal Identification Team, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–5970; or E-mail: jdavis@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in subchapters B and C of chapter I, title 9, of the Code of Federal Regulations contain provisions designed to prevent the dissemination of animal diseases in the United States and facilitate their control and eradication. Subchapter B, ''Cooperative Control and Eradication of Livestock or Poultry Diseases,'' comprises 9 CFR parts 49 through 56; subchapter C, ''Interstate Transportation of Animals (Including Poultry) and Animal Products,'' is made up of 9 CFR parts 70 through 89.

In a proposed rule published in the **Federal Register** on October 31, 1996 (61 FR 56155–56165, Docket No. 96–041–1), we proposed to amend the regulations regarding the interstate movement of livestock by combining the provisions for the approval of livestock markets for cattle and bison, horses, and swine into a single section. In that same document, we also proposed to remove the regulations that restrict the movement of swine and swine products from areas quarantined for hog cholera and that provide for the payment of compensation to the owners of swine destroyed because of hog cholera.

We solicited comments concerning the proposed rule for 60 days ending December 30, 1996. We received five comments by that date. The comments we received were from a private veterinarian, three State animal health officials, and a livestock industry association. Two commenters generally supported the proposed rule but expressed reservations or offered suggestions on particular points. The remaining three commenters were opposed to specific aspects of the proposed rule and spoke only to those issues. The comments are discussed in detail below by subject.

Definitions

One commenter asked why sheep were not included in the proposed definition of *livestock* in § 71.1. When we prepared the proposed definition of *livestock*, our focus was on the term as it applied to the proposed new combined livestock facility agreement. Because that agreement contains no sheep-related provisions, we did not feel it was necessary to include sheep in the definition of *livestock*. However, the regulations in part 71 do refer numerous times to diseases of ''livestock or poultry'' or the interstate movement of ''livestock or poultry;'' in that context, it appears clear that sheep should be included in the definition of *livestock*. We have, therefore, added sheep to the definition of *livestock* in this final rule.

One commenter suggested that we add a definition for cull sows and boars to § 71.1 to differentiate such swine from breeder swine, feeder swine, and slaughter swine. The commenter stated that cull sows and boars, even though they are most often purchased for further feeding, would fall under the definition of *breeder swine* because they are sexually intact, and thus would be subject to more restrictions than other swine intended for further feeding, i.e. those covered under the definition of *feeder swine*. Breeder swine and feeder swine are subject to the same restrictions under the regulations in part 71 as amended by this document, so sexually intact cull sows and boars will not be subject to more restrictions than feeder swine as the commenter had anticipated. Because sexually intact cull sows and boars meet the definition of breeder swine—i.e., sexually intact swine over 6 months of age—and will not be handled in a manner different from breeder swine under the regulations, it is not necessary to define cull sows and boars apart from breeder swine.

Presence of Veterinarians at Livestock Facilities

Two commenters were opposed to the provision of paragraph (1) of the livestock facility agreement in § 71.20(a) that would allow States, with the concurrence of the Animal and Plant Health Inspection Service (APHIS), to determine how frequently State representatives, APHIS representatives, or accredited veterinarians should be present at individual stockyards and livestock facilities. Both commenters believed that the regulations should continue to require that a State or APHIS representative or accredited veterinarian be present on all sale days. One commenter pointed out that most States require a certificate of veterinary inspection for livestock, even for steers and spayed heifers, but that some States allow animals to be moved to livestock markets without a certificate because of the APHIS requirement for a veterinarian to be present at those facilities. That same commenter went on to remark that, in light of the increasing world trade in animals, it would not be prudent to reduce the opportunity for veterinary inspection. The second commenter offered a similar observation, stating that the United States has successfully eradicated or controlled many diseases due in large part to the presence of qualified veterinarians at its livestock markets.

On the same subject, a third commenter stated that it was unclear as to whether a veterinarian would have to be present at a livestock facility when animals were received from another State. As an example, the commenter stated that test-eligible cattle could arrive at an approved livestock facility from a brucellosis Class Free State without a health certificate. In such a case, the commenter asked, would an accredited veterinarian or APHIS or State representative have to be present to receive the animals, or would the approved livestock facility's employees be authorized to check for health certificates?

Closely related to those concerns about the presence of veterinarians at livestock facilities were the concerns of three commenters who opposed the proposed provision of paragraph (7) of the livestock facility agreement in § 71.20(a) that would prohibit the sale of any livestock that show signs of being infected with any infectious, contagious, or communicable disease without the authorization of an APHIS representative, State representative, or accredited veterinarian. One of those commenters pointed out that animals could be moving through an approved facility on a sale day when there is no APHIS, State, or accredited veterinarian on the premises—which is a possibility under paragraph (1) of the livestock facility agreement—then a determination as to the health status of those animals would be the responsibility of the facility's employees, i.e., lay people without the training or scientific background to make such a determination. Another commenter stated that 25 States currently have laws that either exempt or restrict implied warranties in livestock sales transactions. According to the commenter, most of those State laws are conditioned upon compliance with, or showing a reasonable effort to comply with, Federal and State animal health laws. Without a veterinarian present at the facility, the commenter argued, this proposed provision would set an unreasonably high standard and thus adversely affect the protection afforded to livestock facilities by those State laws.

After reviewing and considering the comments discussed in the preceding paragraphs, we believe that the commenters have raised several valid points regarding the disease control and surveillance, regulatory, and liability ramifications of our proposal to require the presence of an APHIS veterinarian, State veterinarian, or accredited veterinarian at approved livestock facilities only on specified sale days. Therefore, based on those comments, we have changed paragraphs (1) and (2) of the livestock facility agreement in § 71.20(a) in this final rule to retain the requirement that an APHIS veterinarian, State veterinarian, or accredited veterinarian be present on all sale days.

Combined Livestock Facility Agreement

One commenter opposed the proposal to combine the livestock facility agreements for cattle and bison, swine, and horses into a single agreement in § 71.20 on the grounds that some facility operators may be unwilling or unqualified to operate a facility for all three classes of livestock. It was not our intention to require all approved livestock facilities to accept all three classes of livestock. In the ''Background'' section of the proposed rule, we stated ''When completing the agreement, the operator of the livestock facility would indicate which animals and classes of animals the facility would accept by initialing the appropriate paragraphs of the agreement.'' In § 71.20(a), under the heading ''Standards for Handling Different Classes of Livestock'' following paragraph (13), the agreement itself states ''By his or her initials, the operator of the facility shall signify the class or classes of livestock that the facility will handle.'' Thus, we do not believe that the livestock facility agreement, as presented in the proposed rule and in this final rule, would require any livestock facility operators to accept all classes of livestock. Therefore, we have made no changes in this final rule based on that comment.

Release of Swine

Paragraph (15)(v) of the livestock facility agreement in § 71.20(a) states that ''no release shall be issued for the removal of feeder swine or breeder swine from the livestock facility until the swine are officially identified in accordance with applicable Federal or State regulations and have been inspected by an APHIS representative, State representative, or accredited veterinarian, and certified in accordance with applicable Federal or State regulations.'' One commenter stated that the paragraph's requirement for all feeder swine and breeder swine to be inspected by an APHIS representative, State representative, or accredited veterinarian prior to release is overly restrictive, especially in States that are classified as brucellosis free and in the latter stages of pseudorabies eradication.

It appears that the inspection-before-release provision of paragraph (15)(v) in the livestock facility agreement in § 71.20(a) was inadvertently carried over from the hog cholera regulations in part 76, which are being removed by this final rule. That provision, as noted by the commenter, is inconsistent with the brucellosis regulations in part 78 and the pseudorabies regulations in part 85. Therefore, because paragraph (15)(i) of the agreement already states that swine must be received, handled, and released by the facility only in accordance with 9 CFR parts 71, 78, and 85, and because paragraph (8) of the agreement requires all livestock to be officially identified as required by those regulations, we have removed paragraph § 71.20(a)(15)(v) in this final rule. Paragraph (15)(vi) has been redesignated as paragraph (15)(v). We have also removed the reference to official identification in that paragraph because, as noted previously, that requirement is already set forth in paragraph (8) of the agreement.

Rules of Practice

One commenter was concerned by the language of proposed § 71.20(b)(1) and (b)(2) regarding rules of practice for hearings that may be held to resolve any conflict of material fact concerning a denial or withdrawal of approval for a livestock facility. As presented in the proposed rule, the regulations state that

rules of practice for such hearings will be adopted by the Administrator of APHIS. The commenter believed that by allowing the rules of practice to be adopted on a case-by-case basis, this provision ''flies in the face of consistency and fairness.'' The commenter suggested that APHIS should either abide by established U.S. Department of Agriculture rules of procedure or adopt and publish a standard set of rules of practice for use in withdrawal hearing cases.

Uniform rules of practice such as those sought by the commenter are used for a formal Administrative Procedures Act (APA) hearing before an administrative law judge. The hearings provided for by this final rule are non-APA proceedings that would be held before a hearing officer, not an administrative law judge, so those uniform rules of practice are not applicable. The due process rights of a person whose livestock facility approval has been denied or withdrawn are met in this rule by its notice and opportunity for that person to be heard before a qualified hearing officer. Therefore, we have made no changes in this rule based on that comment.

Identification of Livestock

One commenter supported the use of premises identification numbers, but questioned why APHIS did not provide for the use of premises identification numbers for animals other than swine. That commenter also stated that it may be necessary to establish minimal standards for assigning premises identification numbers to provide for uniformity within and between States, especially if APHIS allows for their use to identify animals other than swine. The definition of *premises identification number* does not include or exclude any specific animals but, as the commenter noted, the proposed rule did explicitly provide for their use for swine identification only. We believe, however, that the commenter is correct in suggesting that premises identification numbers could be used to identify animals other than swine. Therefore, to provide for the use of premises identification numbers to identify cattle, which is the only other class of livestock that currently requires such identification under the livestock regulations, this final rule amends the definition of *official eartag* in § 71.1 and § 78.1 to provide for the use of a premises identification number on an official eartag. With regard to the commenter's concerns regarding the need for minimal standards for the issuance of *premises identification numbers,* we believe that the definition of premises identification number, as proposed, provides a sufficient degree of guidance for the issuance of numbers. That definition provides that unique numbers that begin with the State's two-letter postal abbreviation will be assigned by the State animal health official to epidemiologically distinct livestock production units. It appears that any further guidance would have to be administrative in nature, and we do not believe that it is necessary to dictate how individual State animal health officials should, for example, distribute numbers or keep records.

Also with regard to premises identification numbers, one commenter questioned the need for a space between the State's two-letter postal abbreviation and premises' assigned number, noting that other official alpha-numeric systems do not require a space. We acknowledge that a space is not necessary in a premises identification number. We have, therefore, amended the definition of *premises identification number* in this final rule to remove the requirement for a space between the State's two-letter postal abbreviation and the premises' assigned number.

One commenter asked that we consider amending § 71.19 to remove all references to identifying swine moved in ''interstate commerce'' and replace them with references to swine ''moved interstate.'' Because our proposed changes to § 71.19 dealt only with means of swine identification—i.e. tattoos and eartags—and not with determining which swine must be identified, that comment is outside the scope of this rulemaking. Any changes to the regulations based on that comment would have to be part of a future rulemaking.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule amends the regulations regarding the interstate movement of livestock by combining the provisions for the approval of livestock markets for cattle and bison, horses, and swine into a single section and by removing the regulations that restrict the movement of swine and swine products from areas quarantined for hog cholera and that provide for the payment of compensation to the owners of swine destroyed because of hog cholera. The changes to the livestock market approval provisions were recommended following a review of APHIS' regulations, programs, and policies regarding livestock markets and stockyards; the hog cholera regulations will be removed because the United States has been free of hog cholera since 1978 and import requirements have proven adequate to prevent the reintroduction of the disease into this country. These actions will eliminate unnecessary or duplicative regulations and remove the implication that hog cholera has not yet been eradicated in the United States.

We estimate that combining livestock market approval provisions for horses, swine, cattle, and bison into a single section and, thus, reducing the livestock market agreement to one form will reduce the number of approvals from 4,800 to fewer than 1,800 because each livestock facility and stockyard will need only one approval. Many livestock facilities and stockyards now have three approvals. APHIS does not charge a user fee for inspections or approvals, so livestock facilities will not experience a reduction in costs. However, this rule change will reduce the amount of paperwork associated with livestock facility approvals.

The removal of the hog cholera regulations in 9 CFR parts 56 and 76 will not have any economic impact on livestock markets or stockyards or any other entity. Hog cholera has been eradicated in the United States since 1978 and there are no enforcement measures currently in place.

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings

before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

9 CFR Part 51

Animal diseases, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements.

9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 75

Animal diseases, Horses, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 76

Animal diseases, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 Part CFR 80

Animal diseases, Livestock, Transportation.

9 CFR Part 85

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending chapter I, title 9, of the Code of Federal Regulations as follows:

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

1. The authority citation for part 51 is revised to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a-1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

§ 51.1 [Amended]

2. In § 51.1, the definition of *Specifically approved stockyard* is amended by removing the reference ''§ 78.44'' and adding the reference ''§ 71.20'' in its place.

PART 56—[RESERVED]

3. Part 56 is removed and reserved.

PART 71—GENERAL PROVISIONS

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

Authority: 21 U.S.C. 111–113, 114a, 114a-1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

5. Section 71.1 is amended as follows:

a. By removing the definitions of *accredited herd, APHIS inspector, designated dipping station, recognized slaughtering center,* and *stockers and feeders.*

b. By adding, in alphabetical order, definitions of *APHIS representative, approved livestock facility, breeder swine, feeder swine, horses, livestock, premises identification number,* and *slaughter swine* to read as set forth below.

c. In the definition of *livestock market,* by removing the word ''swine'' and adding the word ''livestock'' in its place.

d. By revising the definition of *official eartag* to read as set forth below.

§ 71.1 Definitions.

* * * * *

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

Approved livestock facility. A stockyard, livestock market, buying station, concentration point, or any other premises under State or Federal veterinary supervision where livestock are assembled and that has been approved under § 71.20.

* * * * *

Breeder swine. Sexually intact swine over 6 months of age.

* * * * *

Feeder swine. Swine under 6 months of age that are not slaughter swine.

* * * * *

Horses. Horses, asses, mules, ponies, and zebras.

* * * * *

Livestock. Horses, cattle, bison, sheep, and swine.

* * * * *

Official eartag. An identification eartag approved by APHIS as being tamper-resistant and as conforming to the alpha-numeric National Uniform Eartagging System, which provides unique identification for each animal, or as bearing a valid premises identification number.

* * * * *

Premises identification number. A unique number assigned by the State animal health official to a livestock production unit that is, in the judgment of the State animal health official or area veterinarian in charge, epidemiologically distinct from other livestock production units. A premises identification number shall consist of the State's two-letter postal abbreviation followed by the premises' assigned number. A premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal.

* * * * *

Slaughter swine. Swine being sold or moved for slaughter purposes only.

* * * * *

§ 71.3 [Amended]

6. Section 71.3 is amended as follows:

a. In paragraph (a), the words ''hog cholera,'' are removed and the word ''pseudorabies,'' is added in their place.

b. In paragraph (b), the words ''hog cholera,'' are added immediately after the words ''African swine fever,''.

c. In paragraph (c)(2), the reference ''§ 77.8'' is removed and the reference ''§ 77.5'' is added in its place.

d. In paragraph (d), introductory text, in the second proviso, the word ''inspector'' is removed and the word ''representative'' is added in its place.

e. In paragraph (d)(5), first sentence, the word ''inspector'' is removed and the word ''representative'' is added in its place.

§ 71.4 [Amended]

7. Section 71.4 is amended as follows:

a. In paragraph (a), at the end of the first sentence, the word ''inspector'' is removed and the word ''representative'' is added in its place; at the beginning of the second sentence, the words ''such inspector'' are removed and the words ''an APHIS or State representative'' are added in their place; and near the end of the second sentence, the words ''such an inspector'' are removed and the words ''an APHIS or State representative'' are added in their place.

b. In paragraph (b), the word ''inspector'' is removed and the word ''representative'' is added in its place.

§ 71.5 [Amended]

8. In § 71.5, the undesignated regulatory text are amended by removing the word ''inspector'' both

times it appears and by adding the word ''representative'' in its place.

§ 71.6 [Amended]

9. In § 71.6, paragraphs (a) and (b) are amended by removing the word ''inspector'' both times it appears and by adding the word ''representative'' in its place.

§ 71.13 [Amended]

10. In § 71.13, the section heading and the undesignated regulatory text are amended by removing the word ''inspector'' each time it appears and adding the word ''representative'' in its place.

§ 71.16 [Amended]

11. In § 71.16, paragraph (a) is amended by removing the word ''inspector'' both times it appears and by adding the word ''representative'' in its place.

§ 71.18 [Amended]

12. Section 71.18 is amended as follows:

a. In the introductory text of paragraph (a), in the first sentence, the words ''§§ 78.9(a)(3)(iv), 78.9(b)(3)(iv), 78.9(c)(3)(iv), and 78.9(d)(3)(vii)'' are removed and the words ''§§ 78.9(a)(3)(ii), 78.9(b)(3)(iv), and 78.9(c)(3)(iv)'' are added in their place.

b. In paragraph (a)(1)(i), footnote 1, the words ''Veterinary Services'' are removed both times they appear and the word ''APHIS'' is added in their place.

c. Paragraphs (a)(1)(i)(*a*) through (a)(1)(i)(*g*) are redesignated as paragraphs (a)(1)(i)(A) through (a)(1)(i)(G).

d. Paragraphs (a)(1)(ii)(*a*) through (a)(1)(ii)(*f*) are redesignated as paragraphs (a)(1)(ii)(A) through (a)(1)(ii)(F).

e. Paragraphs (a)(1)(iii)(*a*) through (a)(1)(iii)(*g*) are redesignated as paragraphs (a)(1)(iii) (A) through (a)(1)(iii)(G).

f. In paragraph (a)(2), in the second sentence, the word ''inspector'' is removed and the word ''representative'' is added in its place.

g. In paragraph (a)(5), the words ''§ 78.44 of this chapter'' are removed and the reference ''§ 71.20'' is added in its place.

13. Section 71.19 is amended as follows:

a. In the introductory text of paragraph (a)(1), the words ''they are individually'' are removed and the words ''each swine is'' are added in their place.

b. In paragraph (b)(5), the word ''and'' at the end of the paragraph is removed.

c. Paragraph (b)(6) is revised and a new paragraph (b)(7) is added to read as follows:

§ 71.19 Identification of swine in interstate commerce.

* * * * *

(b) * * *

(6) Tattoos on the ear or inner flank of any swine, if the tattoos have been recorded in the book of record of a swine registry association; and

(7) An eartag or tattoo bearing the premises identification number assigned by the State animal health official to the premises on which the swine originated.

* * * * *

14. A new § 71.20 is added to read as follows:

§ 71.20 Approval of livestock facilities.

(a) To qualify for approval by the Administrator as an approved livestock facility [6] and to retain such designation, the individual legally responsible for the day-to-day operations of the livestock facility shall execute the following agreement:

AGREEMENT—APPROVED LIVESTOCK FACILITY FOR HANDLING LIVESTOCK PURSUANT TO TITLE 9 OF THE CODE OF FEDERAL REGULATIONS

[*Name of facility*]
[*Address and telephone number of facility*]

I, [*name of the individual legally responsible for the day-to-day operations of the livestock facility*], operator of [*name of facility*], hereby agree to maintain and operate the livestock facility located at [*address of premises*] in accordance with the applicable provisions of this agreement and Chapter I, Title 9, of the Code of Federal Regulations (9 CFR).

Cooperation

(1) The State animal health official and the area veterinarian in charge shall be provided with a schedule of the facility's sale days, which shall indicate the types of animals that will be handled at the facility on each sale day, and shall be apprised of any changes to that schedule prior to the implementation of the changes.

(2) An accredited veterinarian, State representative, or APHIS representative shall be on the facility premises on all sale days to perform duties in accordance with State and Federal regulations.

(3) State representatives and APHIS representatives shall be granted access to the facility during normal business hours to evaluate whether the facility and its operations are in compliance with the applicable provisions of this agreement and 9 CFR parts 71, 75, 78, and 85.

(4) An APHIS representative, State representative, or accredited veterinarian shall be immediately notified of the presence at the facility of any livestock that are known to be infected, exposed, or suspect, or that show signs of possibly being infected, with any infectious, contagious, or communicable disease.

(5) Any reactor, suspect, or exposed livestock shall be held in quarantined pens apart from all other livestock at the facility.

(6) No reactor, suspect, or exposed livestock, nor any livestock that show signs of being infected with any infectious, contagious, or communicable disease, may be sold at the facility, except as authorized by an APHIS representative, State representative, or accredited veterinarian.

Records

(7) Documents such as weight tickets, sales slips, and records of origin, identification, and destination that relate to livestock that are in, or that have been in, the facility shall be maintained by the facility for a period of 2 years. APHIS representatives and State representatives shall be permitted to review and copy those documents during normal business hours.

Identification

(8) All livestock must be officially identified in accordance with the applicable regulations in 9 CFR parts 71, 75, 78, and 85 at the time of, or prior to, entry into the facility.

Cleaning and Disinfection

(9) The facility, including all yards, docks, pens, alleys, sale rings, chutes, scales, means of conveyance, and their associated equipment, shall be maintained in a clean and sanitary condition. The operator of the facility shall be responsible for the cleaning and disinfection of the facility in accordance with 9 CFR part 71 and for maintaining an adequate supply of disinfectant and serviceable equipment for cleaning and disinfection.

General Facilities and Equipment Standards

(10) All facilities and equipment shall be maintained in a state of good repair. The facility shall contain well-constructed and well-lighted livestock handling chutes, pens, alleys, and sales rings for the inspection, identification, vaccination, testing, and branding of livestock.

(11) Quarantined pens shall be clearly labeled with paint or placarded with the word ''Quarantined'' or the name of the disease of concern, and shall be cleaned and disinfected in accordance with 9 CFR part 71 before being used to pen livestock that are not reactor, suspect, or exposed animals.

(12) Quarantined pens shall have adequate drainage, and the floors and those parts of the walls of the quarantined pens with which reactor, or suspect, or exposed livestock, their excrement, or discharges may have contact shall be constructed of materials that are substantially impervious to moisture and able to withstand continued cleaning and disinfection.

(13) Electrical outlets shall be provided at the chute area for branding purposes.

[6] A list of approved livestock facilities may be obtained by writing to National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231.

Standards for Handling Different Classes of Livestock

(By his or her initials, the operator of the facility shall signify the class or classes of livestock that the facility will handle.)

(14) Cattle and bison:

—This facility will handle cattle and bison: [*Initials of operator, date*]

—This facility will handle cattle and bison known to be brucellosis reactors, suspects, or exposed: [*Initials of operator, date*]

—This facility will not handle cattle and bison known to be brucellosis reactors, suspects, or exposed and such cattle and bison will not be permitted to enter the facility: [*Initials of operator, date*]

(i) Cattle and bison shall be received, handled, and released by the facility only in accordance with 9 CFR parts 71 and 78.

(ii) All brucellosis reactor, brucellosis suspect, and brucellosis exposed cattle or bison arriving at the facility shall be placed in quarantined pens and consigned from the facility only in accordance with 9 CFR part 78.

(iii) Any cattle or bison classified as brucellosis reactors at the facility shall be identified in accordance with 9 CFR part 78, placed in quarantined pens, and consigned from the facility only to a recognized slaughtering establishment or an approved intermediate handling facility in accordance with 9 CFR part 78.

(iv) Any cattle or bison classified as brucellosis exposed at the facility shall be identified in accordance with 9 CFR part 78, placed in quarantined pens, and consigned from the facility only to a recognized slaughtering establishment, approved intermediate handling facility, quarantined feedlot, or farm of origin in accordance with 9 CFR part 78.

(v) The identity of cattle from Class Free States or areas and Class A States or areas shall be maintained.

(vi) The identity of cattle from Class B States or areas shall be maintained, and test-eligible cattle from Class B States or areas shall not be placed in pens with cattle from any other area until they have fulfilled the requirements of 9 CFR part 78 for release from the facility.

(vii) The identity of cattle from Class C States or areas shall be maintained, and test-eligible cattle from Class C States or areas shall not be placed in pens with cattle from any other area until they have fulfilled the requirements of 9 CFR part 78 for release from the facility.

(viii) The identity of cattle from quarantined areas shall be maintained, and test-eligible cattle from quarantined areas shall not be placed in pens with cattle from any other area until they have fulfilled the requirements of 9 CFR part 78 for release from the facility.

(ix) Test-eligible cattle that are penned with test-eligible cattle from a lower class State or area, in violation of this agreement, shall have the status of the State or area of lower class for any subsequent movement.

(x) Laboratory space shall be furnished and maintained for conducting diagnostic tests. All test reagents, testing equipment, and documents relating to the State-Federal cooperative eradication programs on the facility's premises shall be secured to prevent misuse and theft. Adequate heat, cooling, electricity, water piped to a properly drained sink, and sanitation shall be provided for properly conducting diagnostic tests.

(15) Swine:

—This facility will handle breeding swine: [*Initials of operator, date*]

—This facility will handle slaughter swine: [*Initials of operator, date*]

—This facility will handle feeder swine: [*Initials of operator, date*]

—This facility will handle pseudorabies reactor, suspect, or exposed swine: [*Initials of operator, date*].

—This facility will not handle swine known to be pseudorabies reactor, suspect, or exposed swine and such swine will not be permitted to enter the facility: [*Initials of operator, date*].

(i) Swine shall be received, handled, and released by the livestock facility only in accordance with 9 CFR parts 71, 78, and 85.

(ii) Slaughter swine may be handled only on days when no feeder swine or breeder swine are present at the facility, unless the facility has provisions to keep slaughter swine physically separated from feeder swine and breeder swine or unless those areas of the facility used by slaughter swine have been cleaned and disinfected before being used by feeder swine or breeder swine.

(iii) No feeder swine or breeder swine may remain in the livestock facility for more than 72 hours, and no slaughter swine may remain in the livestock market for more than 120 hours.

(iv) Feeder swine shall be kept separate and apart from other swine while in the livestock facility.

(v) No release shall be issued for the removal of slaughter swine from the livestock facility unless the slaughter swine are consigned for immediate slaughter or to another slaughter market and the consignee is identified on the release document.

(16) Horses:

—This facility will handle horses: [*Initials of operator, date*]

—This facility will handle equine infectious anemia (EIA) reactors: [*Initials of operator, date*]

—This facility will not handle horses known to be EIA reactors and will not permit EIA reactors to enter the facility: [*Initials of operator, date*]

(i) Horses shall be received, handled, and released by the livestock facility only in accordance with 9 CFR parts 71 and 75.

(ii) Any horses classified as EIA reactors and accepted by the facility for sale shall be placed in quarantined pens at least 200 yards from all non-EIA-reactor horses or other animals, unless moving out of the facility within 24 hours of arrival.

(iii) Any horses classified as EIA reactors and accepted by the facility for sale shall be consigned from the facility only to a slaughtering establishment or to the home farm of the reactor in accordance with 9 CFR part 75.

(iv) Fly Control Program: The livestock facility shall have in effect a fly control program utilizing at least one of the following: Baits, fly strips, electric bug killers (''Fly Zappers,'' ''Fly Snappers,'' or similar equipment), or the application of a pesticide effective against flies, applied according to the schedule and dosage recommended by the manufacturer for fly control.

Approvals

(17) Request for approval:

I hereby request approval for this facility to operate as an approved livestock facility for the classes of livestock indicated in paragraphs (14) through (16) of this agreement. I acknowledge that I have received a copy of 9 CFR parts 71, 75, 78 and 85, and acknowledge that I have been informed and understand that failure to abide by the provisions of this agreement and the applicable provisions of 9 CFR parts 71, 75, 78, and 85 constitutes a basis for the withdrawal of this approval. [*Printed name and signature of operator, date of signature*]

(18) Pre-approval inspection of livestock facility conducted by [*printed name and title of APHIS representative] on [date of inspection*].

(19) Recommend approval:

[*Printed name and signature of State animal health official, date of signature*]

[*Printed name and signature of area veterinarian in charge, date of signature*]

(20) Approval granted:

[*Printed name and signature of the Administrator, Animal and Plant Health Inspection Service, date of signature*]

(b) *Denial and withdrawal of approval.* The Administrator may deny or withdraw the approval of a livestock facility to receive livestock moved interstate under this subchapter upon a determination that the livestock facility is not or has not been maintained and operated in accordance with the agreement set forth in paragraph (a) of this section.

(1) In the case of a denial, the operator of the facility will be informed of the reasons for the denial and may appeal the decision in writing to the Administrator within 10 days after receiving notification of the denial. The appeal must include all of the facts and reasons upon which the person relies to show that the livestock facility was wrongfully denied approval to receive livestock moved interstate under this subchapter. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(2) In the case of withdrawal, before such action is taken, the operator of the facility will be informed of the reasons for the proposed withdrawal. The operator of the facility may appeal the proposed withdrawal in writing to the Administrator within 10 days after

being informed of the reasons for the proposed withdrawal. The appeal must include all of the facts and reasons upon which the person relies to show that the reasons for the proposed withdrawal are incorrect or do not support the withdrawal of the approval of the livestock facility to receive livestock moved interstate under this subchapter. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. However, withdrawal shall become effective pending final determination in the proceeding when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal shall be effective upon oral or written notification, whichever is earlier, to the operator of the facility. In the event of oral notification, written confirmation shall be given as promptly as circumstances allow. This withdrawal shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

(3) Approval for a livestock facility to handle livestock under this subchapter will be automatically withdrawn by the Administrator when:

(i) The operator of the facility notifies the Administrator, in writing, that the facility no longer handles livestock moved interstate under this subchapter; or

(ii) The person who signed the agreement executed in accordance with paragraph (a) of this section is no longer responsible for the day-to-day operations of the facility.

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

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

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, and 134-134h; 7 CFR 2.22, 2.80, and 371.2(d).

16. Section 75.4 is amended as follows:

a. The section heading is revised to read as set forth below.

b. In paragraph (a), the definition of *Approved stockyard* is amended by removing the words ''this part'' and by adding the words ''§ 71.20 of this chapter'' in their place.

c. In paragraph (c), the paragraph heading is amended by removing the words '', Diagnostic or Research Facilities, and Stockyards'' and by adding the words ''and Diagnostic or Research Facilities'' in their place, and paragraph (c)(3) and the agreement following it are removed.

d. In paragraph (d), the introductory text of the paragraph, including the paragraph heading, and paragraphs (d)(1) and (d)(2) are revised to read as set forth below, and paragraph (d)(5) is removed.

§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, and research facilities.

* * * * *

(d) *Denial and withdrawal of approval of laboratories and diagnostic or research facilities.* The Administrator may deny or withdraw approval of any laboratory to conduct the official test, or of any diagnostic or research facility to receive reactors moved interstate, upon a determination that the laboratory or diagnostic or research facility does not meet the criteria for approval under paragraph (c) of this section.

(1) In the case of a denial, the operator of the laboratory or facility will be informed of the reasons for denial and may appeal the decision in writing to the Administrator within 10 days after receiving notification of the denial. The appeal must include all of the facts and reasons upon which the person relies to show that the laboratory or facility was wrongfully denied approval to conduct the official test or receive reactors moved interstate. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(2) In the case of withdrawal, before such action is taken, the operator of the laboratory or facility will be informed of the reasons for the proposed withdrawal. The operator of the laboratory or facility may appeal the proposed withdrawal in writing to the Administrator within 10 days after being informed of the reasons for the proposed withdrawal. The appeal must include all of the facts and reasons upon which the person relies to show that the reasons for the proposed withdrawal are incorrect or do not support the withdrawal of the approval of the laboratory or facility to conduct the official test or receive reactors moved interstate. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. However, the withdrawal shall become effective pending final determination in the proceeding when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal shall be effective upon oral or written notification, whichever is earlier, to the operator of the laboratory or facility. In the event of oral notification, written confirmation shall be given as promptly as circumstances allow. The withdrawal shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

* * * * *

PART 76—[RESERVED]

17. Part 76 is removed and reserved.

PART 78—BRUCELLOSIS

18. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

19. Section 78.1 is amended as follows:

a. In the definition of *Approved intermediate handling facility,* the reference ''§ 78.44(b)'' is removed and the words ''§ 71.20 of this chapter'' are added in its place.

b. By revising the definition of *Official eartag* to read as set forth below.

c. In the definition of *Originate,* paragraph (c), the reference ''§ 78.44'' is removed and the words ''§ 71.20 of this chapter'' are added in its place.

d. In definition of *Specifically approved stockyard,* the reference ''§ 78.44'' is removed and the words ''§ 71.20 of this chapter'' are added in its place.

§ 78.1 Definitions.

* * * * *

Official eartag. An identification eartag approved by APHIS as being tamper-resistant and as conforming to the alpha-numeric National Uniform Eartagging System, which provides unique identification for each animal, or as bearing a valid premises identification number.

* * * * *

20. Section 78.33 is revised to read as follows:

§ 78.33 Sows and boars.

(a) Sows and boars may be moved in interstate commerce for slaughter or for

sale for slaughter if they are identified in accordance with § 71.19 of this chapter either:

(1) Before being moved in interstate commerce and before being mixed with swine from any other source; or

(2) After being moved in interstate commerce but before being mixed with swine from any other source only if they have been moved directly from their herd of origin to:

(i) A recognized slaughtering establishment; or

(ii) A stockyard, market agency, or dealer operating under the Packers and Stockyards Act, as amended (7 U.S.C. 181 *et seq.*).

(b) Sows and boars may be moved in interstate commerce for breeding only if they are identified in accordance with § 71.19 of this chapter before being moved in interstate commerce and before being mixed with swine from any other source, and the sows and boars either:

(1) Are from a validated brucellosis-free herd or a validated brucellosis-free State and are accompanied by a certificate that states, in addition to the items specified in § 78.1, that the swine originated in a validated brucellosis-free herd or a validated brucellosis-free State; or

(2) Have tested negative to an official test conducted within 30 days prior to interstate movement and are accompanied by a certificate that states, in addition to the items specified in § 78.1, the dates and results of the official tests.

(c) Sows and boars may be moved in interstate commerce for purposes other than slaughter or breeding without restriction under this subpart if they are identified in accordance with § 71.19 of this chapter.

Subpart E—[Heading Amended]

21. The heading of subpart E is amended by removing the words ‘‘, and Specifically Approved Stockyards’’.

§ 78.44 [Removed]

22. Section 78.44 is removed.

PART 80—PARATUBERCULOSIS IN DOMESTIC ANIMALS

23. The authority citation for part 80 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114a–1, 115, 117, 120, 121, and 125; 7 CFR 2.22, 2.80, and 371.2(d).

§ 80.1 [Amended]

24. In § 80.1, paragraph (j) is amended by removing the reference ‘‘§ 78.44’’ and by adding the words ‘‘§ 71.20 of this chapter’’ in its place.

PART 85—PSEUDORABIES

25. The authority citation for part 85 continues to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 85.1 [Amended]

26. In § 85.1, in the definition of *Approved livestock market*, the words ‘‘§ 76.18 (9 CFR 76.18)’’ are removed and the words ‘‘§ 71.20 of this chapter’’ are added in their place.

27. In § 85.1, in the definition of *Slaughter market*, the words ‘‘§ 76.18 (9 CFR 76.18)’’ are removed and the words ‘‘§ 71.20 of this chapter’’ are added in their place.

§ 85.12 [Amended]

28. Section 85.12 is amended by removing the reference ‘‘§ 76.30’’ and by adding the reference ‘‘§ 71.7’’ in its place.

§ 85.13 [Amended]

29. Section 85.13 is amended by removing the reference ‘‘§ 76.31’’ and by adding the reference ‘‘§ 71.7’’ in its place.

Done in Washington, DC, this 19th day of May 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–13499 Filed 5–21–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 96–094–1]

Limited Ports; Dayton, OH

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the animal importation regulations by adding Dayton, OH, to the list of limited ports of entry for horses and horse products, such as horse test specimens, that do not appear to require restraint and holding inspection facilities. We have determined that this port has inspection facilities for this purpose and that Animal and Plant Health Inspection Service personnel are available to provide service at this location. This action will provide an additional port of entry for horses and horse products that do not require restraint and holding facilities for inspection at the port of entry.

DATES: This rule will be effective on July 21, 1997 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before June 23, 1997.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Docket No. 96–094–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your submission refers to Docket No. 96–094–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Animal Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–8423; or e-mail: dvogt@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) restrict the importation of specified animals and animal products into the United States to prevent the introduction of communicable animal diseases. Subpart C—Horses, §§ 92.300 through 92.326 of the regulations, covers the importation of horses. Section 92.303 designates ports approved for the importation of horses. Section 92.303, paragraph (d), lists limited ports, which have inspection facilities for the importation of horses and horse products, such as horse test specimens, that do not appear to require restraint and holding facilities for inspection at the port of entry.

This rule will amend § 92.303(d) in accordance with the procedures explained below under **DATES,** by adding Dayton, OH, to the list of limited ports for the entry of horses and horse products. We have determined that this port has inspection facilities for this purpose and that Animal and Plant Health Inspection Service personnel are available to provide service at this location. This action will provide importers with an alternative port of entry for horses and horse products that do not require restraint and holding

facilities for inspection at the port of entry.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We have determined that Dayton, OH, meets the requirements for being designated as a limited port of entry for horses and horse products. A limited port of entry has inspection capabilities for animals and products that do not appear to require restraint and holding facilities for inspection.

This rule will allow imported horses and horse products that do not require restraint and holding facilities for inspection at the port of entry to be imported into the United States through Dayton, OH. Allowing these horses and horse products to be imported through Dayton, OH, is not expected to result in any significant increase in the number of horses and horse products imported into the United States. The opening of Dayton, OH, as a limited port only provides an alternative point of entry for horses and horse products already allowed to be imported into the United States. It is expected that the number of horses imported through Dayton, OH, will be quite small, probably fewer than 20 a year. A similarly small quantity of horse products is also expected to be imported through the port.

The entities affected by this rule will be those importers who wish to use the port. We believe that most of these entities will be considered small entities by the Small Business Administration's standards, but we do not know how many of them will opt to use the port. The port in Dayton, OH, will provide these importers with an alternative point of entry for horses and horse products, which could result in added convenience and lowered costs for the importers. We do not anticipate that there will be a significant economic impact on any small entities as a result of this rule.

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal disease, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 92.303 [Amended]

2. In § 92.303, paragraph (d) is amended by adding the words ''Dayton, Ohio;'' immediately after ''Montana;''.

Done in Washington, DC, this 19th day of May 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–13501 Filed 5–21–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 96–077–2]

Change in Disease Status of Costa Rica Because of Exotic Newcastle Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring Costa Rica free of exotic Newcastle disease (END). Declaring Costa Rica free of END is appropriate because the country has had no clinical, pathological, or laboratory confirmation of END for the last 5 years. This action removes the prohibition on the importation into the United States, from Costa Rica, of live birds, game birds, poultry, and their products.

EFFECTIVE DATE: June 6, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Animal Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1228, (301) 734–5034.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases, including exotic Newcastle disease (END). END is a contagious, infectious, and communicable disease of poultry.

Section 94.6(a)(1) of the regulations provides that END exists in all countries of the world except those listed in § 94.6(a)(2), which have been declared to be free of END. We will consider declaring a country to be free of END if there have been no reported cases of the

disease in that country for at least the previous 1-year period.

There has been no documented case of END in Costa Rica for the last 5 years. The government of Costa Rica has requested that the U.S. Department of Agriculture (USDA) declare Costa Rica free of END.

On December 31, 1996, we published in the **Federal Register** (61 FR 69051-69052, Docket No. 96–077–1) a proposed rule to amend § 94.6(a)(2) by adding Costa Rica to the list of countries declared to be free of END. This proposed action would remove the prohibition on the importation into the United States, from Costa Rica, of live birds, game birds, poultry, and their products.

We solicited comments concerning our proposal for 60 days ending March 3, 1997. We received one comment by that date. The commenter opposed the proposal because the commenter believes that buying imported chicken is extremely risky from both health and economic standpoints. The commenter said that we need to reconsider the disease issues. The commenter also said that U.S. poultry farmers may not be able to compete with wholesale prices offered by Costa Rican importers.

APHIS bases its decisions to allow animals and animal products to be imported into the United States on whether these importations can be made without significant risk of animal disease introduction. Declaring Costa Rica free of END would remove the prohibition on the importation into the United States, from Costa Rica, of live birds, game birds, poultry, and their products.

APHIS reviewed the documentation submitted by the government of Costa Rica in support of its request to be declared free of END, and a team of APHIS officials traveled to Costa Rica in 1994 to conduct an on-site evaluation of the country's animal health program with regard to the END situation in Costa Rica. The evaluation consisted of a review of Costa Rica's official veterinary services, laboratory and diagnostic procedures, vaccination practices, and administration of laws and regulations intended to prevent the introduction of END into Costa Rica through the importation of animals, meat, or animal products. The results of this on-site visit, and subsequent evaluation, allows APHIS officials to conclude that Costa Rica is free of END. Based on that conclusion, we believe that live birds, game birds, poultry, and their products may be imported from Costa Rica without posing a risk of introducing END into the United States.

In response to the commenter's concerns about the economic impact of the proposal, we do not expect a significant change in the importation of live birds, game birds, poultry, or their products from Costa Rica into the United States as a result of the rule. Even so, as explained previously, APHIS bases its decisions to allow animals and animal products to be imported into the United States on whether these importations can be made without significant risk of animal disease introduction. We do not have the authority to maintain a prohibition on importing animals or animal products based on economic factors. Therefore, we are making no changes to the proposed rule based on this comment.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes the prohibition on the importation into the United States, from Costa Rica, of live birds, game birds, poultry, and their products. We have determined that approximately 2 weeks are needed to ensure that the Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations in 9 CFR part 94 by adding Costa Rica to the list of countries declared to be free of END. This action removes the prohibition on the importation into the United States, from Costa Rica, of live birds, game birds, poultry, and their products, although they would be subject to import health requirements, such as permits, certificates, and quarantines. Based on available information, the Department does not anticipate a major increase in exports of poultry or poultry products from Costa Rica into the United States as a result of this rule.

The commercial chicken industry in Costa Rica is very small relative to the industry in the United States. Costa Rica has about two million mature multipliers (those birds producing other birds for human consumption). By comparison, there are nearly 120 million multiplier hens and pullets of laying age in the United States. We do not expect any movement from Costa Rica into the United States of live chickens, chicks, or hatching eggs. These products are used for genetic stock, and, as Costa Rica imports most of its genetic stock (much of it from the United States), it would not be economically feasible for them to produce genetic stock for export.

We also do not expect a significant change in the importation of poultry products from Costa Rica as a result of this rule. We expect that any poultry product imports from Costa Rica will most likely be chicken meat. Costa Rica produced 60,424 metric tons of chicken meat in 1995, while the United States produced 11.5 million metric tons of chicken meat in the same year. Before any poultry meat can be imported into the United States from Costa Rica, the packing facilities in Costa Rica will require the approval of the Food Safety and Inspection Service (FSIS), USDA. Further, it is unlikely that Costa Rica will or can direct a significant portion of its chicken meat production exclusively to the United States. Even if Costa Rica were to export all of its chicken meat production to the United States, however, that amount would represent less than one percent of U.S. production. Therefore, declaring Costa Rica free of END should not lead to a significant change in the importation of chicken meat into the United States. Thus, this rule is expected to have no more than a minimal impact on domestic producers of poultry products, whether small or large.

In addition, there should be no significant increase in imports of live exotic birds as a result of this rule. In addition to participation in international agreements restricting the movement of exotic birds, Costa Rica itself prohibits the movement of exotic birds for commercial purposes (i.e. other than pets).

This action also would remove a prohibition on the importation of live game birds and their carcasses into the United States from Costa Rica. Although we do not have specific information on the number of such possible importations, we believe the number would be very small, if any, and that

such importations would be by individuals for personal use.

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.6 [Amended]

2. In § 94.6, paragraph (a)(2) is amended by adding ''Costa Rica,'' immediately after ''Chile,'.

Done in Washington, DC, this 19th day of May 1997.

Terry L. Medley,

Aministrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–13500 Filed 5–21–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 96–023DF]

RIN 0583–AC14

Use of Liquid Nitrogen for Contact Freezing of Meat and Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) will permit the use of liquid nitrogen for the contact freezing of meat and meat products. The use of liquid nitrogen to contact freeze poultry and poultry products is already permitted and the effects are the same. The substance is completely safe for the consumer, and, with the use of reasonable safety precautions as prescribed by Occupational Safety and Health Administration (OSHA) standards, safe for inspectors and workers in the establishment as well.

EFFECTIVE DATE: This rule will be effective on July 21, 1997, unless adverse or critical comments within the scope of the rulemaking or notice of intent to submit adverse comments within the scope of the rulemaking are received on or before June 23, 1997.

ADDRESSES: Send an original and two copies of adverse written comments within the scope of the rulemaking to: FSIS Docket Clerk, DOCKET #96–023DF, Room 102 Cotton Annex Building, 300 12th Street, SW, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700. Data submitted by the petitioner and all comments received will be available for public inspection from 8:30 a.m. to 1:00 p.m., and from 2:00 p.m. to 4:30 p.m., Monday through Friday, in the FSIS Docket Room.

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Facilities, Equipment, Labeling, and Compounds Review Division, (202) 418–8900.

SUPPLEMENTARY INFORMATION: BOC Gases petitioned the Department to change the Federal meat inspection regulations to permit liquid nitrogen to be used for the contact freezing of meat and meat products. The petitioner made the point that this substance is already permitted to contact freeze poultry and poultry products under the poultry products inspection regulations. In addition, the petitioner submitted correspondence from the Food and Drug Administration (FDA) which indicated that liquid nitrogen is generally recognized as safe for use as a propellant, aerating agent and gas under 21 CFR 184.1540. Although not specifically listed as a freezant, FDA has advised that it does not object to the use of liquid nitrogen as a freezant, so long as it is of a purity suitable for its intended use. FSIS also knows of no food safety concerns with respect to this substance.

Further, because the liquid nitrogen has a temperature of −320 °F, such chilling is ideal for achieving rapid freezing which halts bacterial growth, thus both increasing food safety by inhibiting the multiplication of pathogens and improving shelf life and meat quality by inhibiting spoilage organisms. The possibility of cross contamination from exchange of marinade or breading is virtually nonexistent because of the extremely fast chill, creating an immediate stabilization of the exterior surfaces upon contact.

Liquid nitrogen is an asphyxiant and is dangerously cold. However, the Occupational Safety and Health Administration (OSHA) requirements include a 19% oxygen atmosphere and the use of venting and warning signs to prevent human exposure. This method of chilling has been used in a number of poultry plants for some time without incident.

Therefore, FSIS is amending the table of approved substances in 9 CFR 318.7 (c)(4) to allow the use of liquid nitrogen as a contact freezant for meat and meat products. FSIS expects no adverse public reaction from this change in regulatory language. Therefore, unless the Agency receives adverse or critical comments within the scope of the rulemaking or a notice of intent to submit adverse comments within 30 days, the action will become final 60 days after publication in the **Federal Register**. If such adverse comments are received, the final rulemaking will be withdrawn and a proposed rulemaking notice will be published. The proposed rulemaking notice will establish a comment period.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All state and local laws and regulations that are inconsistent with this regulation will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Executive Order 12866 and the Regulatory Flexibility Act

This final rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget.

The Administrator has made an initial determination that this direct final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The direct final rule will permit the use of liquid nitrogen as a contact freezant for meat and meat products. Use of this freezant is voluntary. Because the freezant does not add anything to the product ingredients, a label change is not required. Decisions by individual manufacturers on whether to use this freezant will be based on their conclusions as to whether the benefits of use of this freezant outweigh the costs, including following the safety precautions mandated by OSHA.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

Final Rule

For the reasons discussed in this preamble, FSIS is amending 9 CFR part 318 as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. In the chart in § 318.7 (c)(4), under the Class of Substance ''Gases'' a new entry for the substance ''liquid nitrogen'' is added right after ''carbon dioxide solid (dry ice)'' to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	*
Gases				
*	*	*	*	*
	Liquid nitrogen	Contact freezant	Various	Sufficient for purpose.
*	*	*	*	*

* * * * *

Done at Washington, DC, on May 14, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–13408 Filed 5–21–97; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–201–AD; Amendment 39–10036; AD 97–11–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model MD–90–30 airplanes, that requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness [MD–90–30 Airworthiness Limitations Instructions (ALI)]. The revision will incorporate certain compliance times for inspections to detect fatigue cracking of principal structural elements (PSE) and to add PSE's to the ALI. This amendment is prompted by analysis of data that identified reduced initial inspection thresholds, reduced repetitive inspection intervals for PSE's, and other PSE's to be added to the ALI. The actions specified by this AD are intended to ensure that fatigue cracking of various PSE's are detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

EFFECTIVE DATE: June 26, 1997.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model MD–90–30 airplanes was published in the **Federal Register** on March 7, 1997 (62 FR 10490). That action proposed to require operators to revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness [MD–90–30 Airworthiness Limitations Instructions (ALI)]. The revision would incorporate certain compliance times for inspections to detect fatigue cracking of principal structural elements (PSE) and to add PSE's to the ALI.

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

Both commenters support the proposed rule.

Conclusion

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

Cost Impact

There are approximately 15 McDonnell Douglas Model MD–90–30 airplanes of the affected design in the worldwide fleet. The FAA estimates that 11 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $660, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

97–11–07 McDonnell Douglas: Amendment 39–10036. Docket 96–NM–201–AD.

Applicability: All Model MD–90–30 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

(a) Within 180 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness [Airworthiness Limitations Instructions (ALI), McDonnell Douglas Report No. MDC–94K9000, dated November 1994] to incorporate the Item, Location, and Inspection Interval of the following principal structural elements: This may be accomplished by inserting a copy of Revision 1 of the ALI, dated January 1995, or a copy of this AD into the ALI.

Item	Location	Inspection interval (in landings)	
		Initial	Repeat
Item 53.30.02.3	Skin Panels, STA 237 to 1395 Fuselage Skin in Constant Section from Longeron 3 Left to Longeron 3 Right.	60,000	11,000
Item 53.30.02.4	Skin Panels, STA 237 to 1395 Fuselage Hoop Skin Splice in Constant Section from Longeron 5 Left to Longeron 5 Right.	60,000	30,000
Item 54.10.04.1	Thrust Bulkhead, Pylon—STA Yn 170.5—Rear Spar and Engine Thrust Support Fitting (Upper and Lower).	15,000	4,500

(b) Within 180 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness [Airworthiness Limitations Instructions (ALI), McDonnell Douglas Report No. MDC–94K9000, dated November 1994] to incorporate the Item, Location, and Inspection Interval of the following principal structural elements: This may be accomplished by inserting a copy of Revision 2 to the ALI, dated July 1996, or a copy this AD into the ALI.

Item	Location	Inspection interval (in landings)	
		Initial	Repeat
Item 55.13.01.1	Plates/Skin—Upper STA Xh 27.2 Left to Xh 27.2 Right—Upper Aft Skin Plank with Integral Stringers from Xh 7.234 to Xh 26.859.	60,000	8,100

(c) Except as provided in paragraph (d) of this AD: After the actions specified in paragraphs (a) and (b) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the parts specified in paragraph (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on June 26, 1997.

Issued in Renton, Washington, on May 16, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–13467 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–31–AD; Amendment 39–10037; AD 97–11–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–415 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier Model CL–415 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the propeller ground beta range was used improperly during flight. The actions specified in this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Effective June 6, 1997.

Comments for inclusion in the Rules Docket must be received on or before July 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–31–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter LeVoci, Flight Test Pilot, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7514; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the beta range during flight on airplanes equipped with turboprop engines. (For the purposes of this amendment, Beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the fourteen in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability, or engine overspeed with consequent loss of engine power.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved Airplane Flight Manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

FAA's Determinations

After examining the circumstances and reviewing all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since Bombardier Model CL–415 series airplanes meet these criteria, the FAA finds that the AFM for these airplanes must be revised to include the limitation and statement of consequences described previously.

U.S. Type Certification of the Airplane

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

This AD requires revising the Limitations Section of the AFM to modify the limitation that prohibits positioning the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

This is considered to be interim action until final action is identified, at which time the FAA may consider additional rulemaking.

Cost Impact

None of the Model CL–415 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–31–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

97–11–08 Bombardier, Inc. (Formerly Canadair): Amendment 39–10037. Docket 97–NM–31–AD.

Applicability: All Model CL–415 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on June 6, 1997.

Issued in Renton, Washington, on May 16, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–13465 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 530

[Docket No. 97N–0172]

Extralabel Animal Drug Use; Fluoroquinolones and Glycopeptides; Order of Prohibition

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; order of prohibition.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order prohibiting the extralabel use of fluoroquinolones and glycopeptides. The agency is issuing this order because it believes that some extralabel uses of fluoroquinolones and glycopeptides in food-producing animals are capable of increasing the level of drug resistant zoonotic pathogens (pathogens that are infective to humans) in treated animals at the time of slaughter. FDA finds that some extralabel uses of fluoroquinolone and glycopeptide drugs in food-producing animals likely will cause an adverse event, which constitutes a finding under the Animal Medicinal

Drug Use Clarification Act of 1994 (the AMDUCA) that extralabel use of these drugs in food animals presents a risk to the public health. Therefore, the agency is issuing this order of prohibition.

DATES: The order of prohibition is effective August 20, 1997. Submit written comments by July 21, 1997.

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

FOR FURTHER INFORMATION CONTACT: Richard L. Arkin, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

SUPPLEMENTARY INFORMATION:

I. Background

On October 22, 1994, the President signed the AMDUCA into law (Pub. L. 103–396). The AMDUCA which amended the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq*.) to allow licensed veterinarians to prescribe extralabel uses of approved animal drugs and human drugs in animals. Section 2(a)(4)(D) of the AMDUCA (21 U.S.C. 360b(a)(4)(D)) provides that the agency may prohibit an extralabel drug use in animals if, after affording an opportunity for public comment, the agency finds that such use presents a risk to the public health.

In the **Federal Register** of November 7, 1996 (61 FR 57732), FDA published the implementing regulations for the AMDUCA. The regulations will be codified in part 530 (21 CFR part 530). Sections 530.21 and 530.25 describe the basis for issuing an order prohibiting an extralabel drug use in food-producing animals. The procedure to be followed in issuing an order of prohibition is set out in § 530.25. The list of drugs prohibited from extralabel use is set forth in § 530.41.

The AMDUCA requires that opportunity be given for public comment before a prohibition becomes effective. The regulation provides, at § 530.25, for a public comment period of not less than 60 days. It also provides that the order of prohibition will become effective 90 days after the date of publication, unless FDA revokes the order, modifies it or extends the period of public comment. The regulation also states that reasons for the prohibition will be specified.

In the November 7, 1996 final rule, FDA responded to comments from the public on the proposed rule to implement the AMDUCA (61 FR 25106, May 17, 1996) that expressed concerns about the implications of extralabel use for the development and transfer of antimicrobial resistance. FDA's response to these comments noted that the agency believes that the selection of resistant human pathogens could be a basis for restricting extralabel drug use provided that the statutory standards for restriction can be met for particular drugs or classes of drugs (61 FR 57732 at 57736 and 57737). The agency is aware that an association between use of antimicrobial drugs and antimicrobial resistance has been documented (Refs. 1, 2, 3, 4, and 5). Antimicrobial resistant zoonotic enteric microorganisms can be transmitted to humans through consumption of animal products, and certain resistant microorganisms can be transmitted through contact with farm animals and through the environment.

In response to comments suggesting that the agency prohibit extralabel use of approved fluoroquinolones and glycopeptides in food-producing animals, the agency stated that it had decided to initiate the process specified by the AMDUCA to implement such prohibition (61 FR 57732 at 57737). The agency's Center for Veterinary Medicine (CVM) has, since the time it first approved a fluoroquinolone for use in food animals (August 1995), informally asked veterinarians to voluntarily refrain from extralabel use of these drugs in food animals. Veterinarians' professional associations have actively encouraged their members to refrain from indiscriminate extralabel use of fluoroquinolones.

FDA intends to prohibit by order the extralabel use of fluoroquinolones and glycopeptides in food-producing animals because, as discussed in sections II and III of this document, the agency has determined that use of these drugs other than for the approved label indications in food-producing animals meets the criteria for prohibition in the AMDUCA. These drugs are added to the list of drugs prohibited for extralabel use at § 530.41.

Sixty days from the date of this publication are provided for comment. The order will become effective 90 days from the date of this publication, unless the agency before that time revokes or modifies the order, or extends the period for public comment.

In passing the AMDUCA, Congress granted FDA broad authority to protect the public health by allowing the agency to restrict or prohibit extralabel uses. A prohibition may be based on a finding that an extralabel use ''presents a risk to the public health,'' which FDA has defined in § 530.3(e) as ''likely will cause an adverse event.'' The statutory scheme clearly establishes that prohibiting an extralabel use does not jeopardize an underlying approval or the future approvability of the same active ingredient or class of drug. A total prohibition against extralabel use is an action by the agency which restricts use of the drug to conditions of use established through approval of a new animal drug application. A finding of ''likely will cause an adverse event'' is not a determination regarding the safety of the drug for its approved uses. That determination is made in the approval process, i.e., an approved drug has been determined to be safe for use under labeled conditions.

II. Fluoroquinolones

FDA has approved sarafloxacin and enrofloxacin, both of which are fluoroquinolones, for therapeutic use in poultry. The approvals, the first of which was granted in August 1995, are for sarafloxacin hydrochloride for use in drinking water and sarafloxacin and enrofloxacin injectable products. The agency had previously approved enrofloxacin for use in nonfood animals.

All of these approvals are conditioned on use under a veterinarian's supervision. This restriction for the food-producing animal approvals was established, among other reasons, to reduce the rate of emergence of sarafloxacin-resistant organisms. Public health concerns associated with potential increases in antimicrobial resistance were satisfactorily addressed in the poultry approvals by establishing conditions of use intended to minimize inappropriate use of the products and to minimize excretion of the drug and drug-resistant zoonotic pathogens into the environment. Essentially, the agency was assured that under the conditions of use stated in the approval, any increase in the level of resistant zoonotic pathogens present in the animals at time of slaughter would be insignificant. The sponsors agreed to provide baseline susceptibility information on target animal pathogens and to conduct ongoing monitoring of the target animal pathogens as a postmarketing surveillance program. Also, FDA implemented with the Centers for Disease Control and Prevention and the U.S. Department of Agriculture a national antibiotic resistance monitoring program in zoonotic enteric pathogens in order to detect emerging resistance to these pathogens and contain their development. Thus, the agency concluded that resistance development under the conditions of approval could be monitored and adequately contained.

Before granting the food animal approvals for fluoroquinolones, CVM

sought advice from its Veterinary Medicine Advisory Committee, and the Center for Drug Evaluation and Research's Anti-Infective Drugs Advisory Committee (the joint committee), in a joint meeting held May 11 and 12, 1994. The joint committee agreed that there is a need for fluoroquinolones in food animal medicine and did not object to the approval of fluoroquinolones for such use. However, the joint committee members generally supported restrictions on the use of the drugs in order to maximize benefits and minimize risks related to the development of resistant organisms. Use restrictions that were suggested included prohibiting extralabel use, as well as requiring a veterinarian's supervision and monitoring resistance levels.

The data and information presented to the joint committee, and otherwise available to the agency, support the agency's conclusion that some extralabel uses of fluoroquinolones in food animals meet the AMDUCA regulation's standard of ''likely will cause an adverse event'' (Ref. 6). Recent reports from the United Kingdom (U.K.) of the occurrence of human cases and epizootic spread of a multiple-drug resistant strain of *Salmonella typhimurium*, Definitive Type 104 (DT 104) are also of concern, (Refs. 7, 8, and 9). Epidemiological surveys have found an increase in the percentage of DT 104 isolates in the U.K. to be resistant to ciprofloxacin, a fluoroquinolone which is used for the treatment of invasive salmonellosis in humans including salmonellosis caused by DT 104. The spread of DT 104 in the U.K. from animals to man has been associated with exposure via food and direct contact is supported by data from the U.K. An association between veterinary use of enrofloxacin and the development of fluoroquinolone resistance in DT 104 has been suggested by several scientists (Ref. 7). Additionally, studies in the U.K. and Europe document the development of *Campylobacter* and *Salmonella* resistant to fluoroquinolones following introduction of fluoroquinolone use in both humans and food animals (Refs. 10, 11, 12, 13, 14, and 15).

Expert opinion expressed during the joint committee meeting and opinions in comments to the proposed AMDUCA implementing regulations support the view that increased selective pressure on bacteria resulting from some of the many potential extralabel uses of fluoroquinolones likely will lead to resistance development and to the maintenance of the resistance levels until slaughter, thereby increasing the risk of transfer of resistant organisms to humans and the compromise of human therapy. The data and information necessary to determine, in particular situations, whether the resistance level at time of slaughter would be increased above normal as a result of extralabel use is not generally available to practicing veterinarians, who must make the extralabel use decisions. Thus, while the agency cannot know the effect of each and every potential extralabel use on the development of resistant pathogens and on their presence on or in animals at the time of slaughter, it can reasonably conclude, based on available information, that such development likely will occur, and that such resistant pathogens likely will be present at slaughter as a result of some extralabel uses. Because some extralabel uses likely would cause an adverse public health event, the agency is acting in the interest of the public health by prohibiting extralabel use of fluoroquinolones in food-producing animals. The agency is thereby restricting such drugs to conditions of use that are established through the new animal drug approval process.

As explained previously, this conclusion does not undermine the new animal drug approvals that have been granted for fluoroquinolones because the necessary assurances of safety to the public were provided for the approved conditions of use during the approval process.

The AMDUCA does not require the agency to prohibit an extralabel use when the use meets the statutory standard for prohibition. The act states that the agency ''may'' do so. The agency believes that this is an appropriate case for the use of the prohibition authority Congress provided. In addition to the reasons previously stated, the agency notes that fluoroquinolones are used extensively in human medicine to treat many infectious diseases, and they are the only antimicrobial agents that are effective for treatment of certain diseases. Also, extralabel use of fluoroquinolones in food-producing animals would interfere with CVM's ability to interpret the monitoring and surveillance data that will be obtained through the National Antimicrobial Susceptibility Monitoring Program (see 61 FR 57732 at 57736 and 57737) and the postapproval monitoring program for the approved fluoroquinolones. These data are critical because early detection of emerging resistance, identified through the monitoring program, will allow the agency to contain any resistance that does occur, thereby limiting its spread.

III. Glycopeptides

One glycopeptide, vancomycin, is approved for use in human medicine. No glycopeptides are approved for animal use. Thus, as a practical matter, the agency's prohibition against extralabel use in animals of glycopeptides applies only to this one human drug product. However, the prohibition will apply to any future animal drug approvals of glycopeptides unless the circumstances at the time of such approval cause the agency to reevaluate any part of the prohibition.

A number of scientific organizations and individual experts who commented on the proposed AMDUCA regulations recommended that the agency prohibit extralabel use of glycopeptides (Ref. 16). Those comments are supported by the following data and information. Glycopeptide-resistant *Enterococci* have become a very serious concern in human medicine, because a lack of effective alternative drugs for treatment have resulted in increased morbidity and mortality (Ref. 4). Vancomycin is a major agent used for treating serious methicillin-resistant *Staphylococcus aureus* infections.

One study in the U.K. has shown that vancomycin resistant bacteria may be acquired from animals (Ref. 17). Another study, done in Denmark, has established a connection between feed use of avoparcin, a glycopeptide, and vancomycin-resistant *Enterococcus faecium* (*E. Faecium*) (Ref. 18). The resistant organisms were found in food products from both poultry and swine that had been fed avoparcin. Further, vancomycin-resistant *E. faecium* of the same type were found in both pigs and humans, leading the authors to conclude that vancomycin resistant *E. faecium* can be transmitted to humans through food.

The ''adverse event'' associated with extralabel use of glycopeptides in food-producing animals is therefore the same as that discussed earlier with regard to extralabel use of fluoroquinolones. The agency's basis for prohibiting extralabel uses in food-producing animals of glycopeptides is also the same as that for fluoroquinolones. That is, the extralabel use of glycopeptides in food-producing animals likely will lead to increased risk of transfer of resistant organisms to humans and compromise human therapy. Therefore, the agency is acting in the interest of the public health and prohibiting the extralabel use of glycopeptides in food-producing animals.

IV. References

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

1. *Report of the ASM Task Force on Antibiotic Resistance*, The American Society for Microbiology Public and Scientific Affairs Board, Washington, March 16, 1995.

2. Lederberg, J., R. E. Shope, and S. C. Oaks, eds., *Emerging Infections; Microbial Threats to Health in the United States*, Institute of Medicine Committee on Emerging Microbial Threats to Health, pp. 159–160, National Academy Press, 15, Washington, 1992.

3. Letter from Kenneth I. Berns and Gail Cassell, American Society of Microbiology, p. 1, to Dockets Management Branch (HFA–305), Food and Drug Administration, dated July 31, 1996.

4. U.S. Congress, Office of Technology Assessment, *Impacts of Antibiotic-Resistant Bacteria*, OTA–H–629 p. 72, U.S. Government Printing Office, Washington, DC, September 1995.

5. Piddock, L. J. V., ''Does the Use of Antimicrobial Agents in 16 Veterinary Medicine and Animal Husbandry Select Antibiotic-Resistant Bacteria That Infect Man and Compromise Antimicrobial Chemotherapy?'' *Journal of Antimicrobial Chemotherapy*, Vol. 38, pp. 1–3, 1996.

6. Joint Meeting of the Veterinary Medicine Advisory Committee and Anti-Infective Drugs Advisory Committee, Food and Drug Administration, Gaithersburg, MD, Associated Reporters of Washington, pp. 144–195 (transcript), Washington, May 12, 1994.

7. Threlfall, E. J., et al., ''Increasing Spectrum of Resistance in Multiresistant *Salmonella typhimurium*,'' *Lancet*, Vol. 327, pp. 1053–1054, 1996.

8. Threlfall, E. J., et al., ''Epidemic in Cattle of *Salmonella Typhimurium* DT104 with Chromosomally Integrated Multiple Drug Resistance,'' *Veterinary Record*, Vol. 134, p. 577, 1994.

9. Wall, P. G., et al., ''A Case Control Study of Infection with an Epidemic Strain of Multi-resistant *Salmonella Typhimurium* DT104 in England and Wales,'' *Communicable Disease Report*, Vol. 4, pp. R130–135, 1995.

10. Endtz, et al., ''Quinolone Resistance in *Campylobacter* Isolated from Man and Poultry Following the Introduction of Fluoroquinolones in Veterinary Medicine,'' *Journal of Antimicrobial Chemotherapy*, Vol. 27, pp. 199–208, 1991.

11. Endtz, H. P., et al., ''Fluoroquinolone Resistance in *Campylobacter* Spp. Isolated from Human Stools and Poultry Products,'' *Lancet*, Vol. 335, p. 787, 1990.

12. Piddock, L. J. V., et al., ''Quinolone Resistance in *Salmonella* Spp: Veterinary Pointers,'' *Lancet*, Vol. 336, p. 125, 1990.

13. Piddock, L. J. V., ''Quinolone Resistance and *Campylobacter* Spp.'' (review), *Journal of Antimicrobial Chemotherapy*, Vol. 36, pp. 891–898, 1995.

14. Griggs, D. J., et al., ''Quinolone Resistance in Veterinary Isolates of *Salmonella*,'' *Journal of Antimicrobial Chemotherapy*, Vol. 33, pp. 1173–1189, 1994.

15. Velazquez, J. B., et al., ''Incidence and Transmission of Antibiotic Resistance in *Campylobacter Jejuni* and *Campylobacter Coli*,'' *Journal of Antimicrobial Chemotherapy*, Vol. 35, pp. 173–178, 1995.

16. Letter from William A. Craig, Professor of Medicine and Pharmaceutics, University of Wisconsin, to Dockets Management Branch (HFA–305), Food and Drug Administration, July 31, 1996.

17. Bates, J., J. Z. Jordens, and D. T. Griffiths, ''Farm Animals as a Putative Reservoir for Vancomycin-resistant Enterococcal Infection in Man,'' *Journal of Antimicrobial Chemotherapy*, Vol. 34, pp. 507–516, 1994.

18. ''*Report from the Danish Veterinary Laboratory: The Effect of Avoparcin Used as a Feed Additive on the Occurrence of Vancomycin Resistant Enterococcus Faecium in Pig and Poultry Production*,'' Danish Veterinary Laboratory, Copenhagen, July 1995.

V. Request for Comments

Interested persons may, on or before July 21, 1997, submit to the Dockets Management Branch (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office between 9 a.m. and 4 p.m., Monday through Friday.

VI. Order of Prohibition

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under the authority delegated to the Commissioner of Food and Drugs, I hereby issue the following order under section 2(a)(4)(D) of the AMDUCA, Pub. L. 1–3–396 (21 U.S.C. 360b(a)(4)(D)) and §§ 530.21 and 530.25. FDA finds that some extralabel uses of fluoroquinolone and glycopeptide drugs in food-producing animals likely will cause an adverse event, which constitutes a finding under the AMDUCA that extralabel use of these drugs in food animals presents a risk to the public health. Therefore, fluoroquinolone and glycopeptide drugs are prohibited for extralabel use in food-producing animals.

List of Subjects in 21 CFR Part 530

Administrative practice and procedure, Advertising, Animal drugs, Animal feeds, Drugs, Labeling, Prescription drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 530 is amended to read as follows:

PART 530—EXTRALABEL DRUG USE IN ANIMALS

1. The authority citation for 21 CFR part 530 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 501, 502, 503, 505, 507, 512, 701, and 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 360b, 371, 379e).

2. Section 530.41 is revised to read as follows:

§ 530.41 Drugs prohibited for extralabel use in animals.

(a) The following drugs, families of drugs, and substances are prohibited for extralabel animal and human drug uses in food-producing animals.

(1) Chloramphenicol;

(2) Clenbuterol;

(3) Diethylstilbestrol (DES);

(4) Dimetridazole;

(5) Ipronidazole;

(6) Other nitroimidazoles;

(7) Furazolidone (except for approved topical use);

(8) Nitrofurazone (except for approved topical use);

(9) Sulfonamide drugs in lactating dairy cattle (except approved use of sulfadimethoxine, sulfabromomethazine, and sulfaethoxypyridazine);

(10) Fluoroquinolones; and

(11) Glycopeptides.

(b) The following drugs, families of drugs, and substances are prohibited for extralabel animal and human drug uses in nonfood-producing animals: [Reserved.]

Dated: May 19, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–13677 Filed 5–20–97; 2:50 pm]

BILLING CODE 4160–01–F

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 606

Standards of Ethical Conduct for Employees of the United States Arms Control and Disarmament Agency

AGENCY: Arms Control and Disarmament Agency.

ACTION: Final rule.

SUMMARY: The United States Arms Control and Disarmament Agency

(ACDA) is revoking its existing superseded employee responsibility and conduct regulations at 22 CFR part 606, and, in their stead, inserting cross-references to the executive branch-wide Standards, as well as to executive branch financial disclosure regulations.

EFFECTIVE DATE: These regulations are effective May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Janice F. Caramanica, Office of the General Counsel, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW, Washington, DC 20451, (202) 647–3596.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional extensions for certain existing provisions at 59 FR 4779–4780 and 60 FR 6390–6391. The executive branch-wide Standards are now codified at 5 CFR part 2635. Effective February 3, 1993, they established uniform ethical conduct standards applicable to all executive branch personnel.

ACDA is revoking the provisions of its existing standards of conduct regulations that have already been superseded or that are superseded upon issuance of this regulation and replacing them with a new section that provides a cross reference to 5 CFR parts 2634 and 2635.

II. Revocation of ACDA's Responsibilities and Conduct Regulations

This final rule revokes ACDA's employee responsibility and conduct regulations at 22 CFR part 606, now superseded. Some of those regulations were superseded when the confidential financial disclosure provisions of the executive branch-wide financial disclosure regulations at 5 CFR part 2634 took effect on October 5, 1992, and many others were superseded when the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 became effective on February 3, 1993. Others were retained in ACDA's internal regulations since they dealt with other aspects of employee conduct such as indebtedness and political activity.

The ACDA residual standards rule replaces ACDA's revoked ethics regulations with a cross-reference at new 22 CFR part 606 to OGE's rules at 5 CFR parts 2634 and 2635.

III. Matters of Regulatory Procedure

Executive Order 12866

In issuing this rule, ACDA has adhered to the regulatory philosophy and the applicable principles of regulation as set forth in Section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under that Executive Order, as it deals with agency organization, management, and personnel matters and is not, in any event, deemed ''significant'' thereunder.

Paperwork Reduction Act

ACDA has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because the proposed regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Administrative Procedure Act

This rulemaking is related solely to ACDA's organization, procedure, and practice. Consequently, ACDA has found that good cause exists under 5 U.S.C. 553(b)(3) (A), (B), and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these rules and revocations.

Regulatory Flexibility Act

ACDA hereby certifies that this rule will not have significant economic impact on a substantial number of small entities. This rule affects only Federal employees and their immediate families. Accordingly, a regulatory flexibility analysis is not required.

Unfunded Mandates Act Determination

ACDA has determined that this rule will not result in expenditures by state, local, and tribal government, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

List of Subjects in 22 CFR Part 606

Conflict of interests, Government employees.

Dated: May 7, 1997.

Mary Elizabeth Hoinkes,

General Counsel, United States Arms Control and Disarmament Agency.

For the reasons set forth in the preamble, the United States Arms Control and Disarmament Agency, with the concurrence of the Office of Government Ethics, revises title 22, chapter VI, part 606 of the Code of Federal Regulations to read as follows:

PART 606—EMPLOYEE ETHICAL RESPONSIBILITIES AND CONDUCT

Sec.

606.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Authority: 5 U.S.C. 7301; 18 U.S.C. 208(b)(2); 5 CFR 2634.

§ 606.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the United States Arms Control and Disarmament Agency (ACDA) should refer to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 and the Executive Branch financial disclosure regulations at 5 CFR part 2634.

[FR Doc. 97–13390 Filed 5–21–97; 8:45 am]

BILLING CODE 6820–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250, 251, 256, 281, and 282

RIN 1010–AB92

Surety Bonds for Outer Continental Shelf Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the surety bond provisions of Minerals Management Service (MMS) regulations to establish December 8, 1997, as the deadline for Outer Continental Shelf (OCS) oil and gas and sulphur lessees to comply with new levels of bond coverage established in 1993. It also makes other changes that reduce the risk of default by an underfunded entity who operates a lease or holds a pipeline right-of-way or geological and geophysical (G&G) exploration permit to drill a deep stratigraphic test well.

EFFECTIVE DATE: August 20, 1997.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella, Engineering and Operations Division, at (703) 787–1607.

SUPPLEMENTARY INFORMATION: This rule:

(1) Establishes December 8, 1997, as the deadline for every lessee to comply with the bond coverage requirements established in the rule published August 27, 1993 (58 FR 45255).

(2) Clarifies our position that co-lessees and operating rights owners are

jointly and severally liable for compliance with our regulations and the terms and conditions of their OCS oil and gas and sulphur lease for nonmonetary obligations.

(3) Clarifies our position that an assignor of an OCS lease remains responsible for all wells and facilities that were in existence at the time the assignor assigns its interest until the wells are plugged and abandoned, the facilities are decommissioned, and the site is reclaimed.

(4) Establishes regulatory frameworks for acceptance of lease-specific abandonment accounts and third-party guarantees.

(5) Sets a higher more realistic level of bond coverage to be required of the holder of a G&G exploration permit to drill a deep stratigraphic test well and authorizes a demand for a supplemental bond from the holder of a G&G permit or pipeline right-of-way.

This rule is the product of our efforts to write regulations in plain English and continue our attempts to provide optimum flexibility for a lessee to meet our lease bond requirements and ensure that lessees adequately fund their end-of-lease obligations.

We have, on a case-by-case basis, allowed an individual lessee to furnish a third-party guarantee or to ensure funding for its lease abandonment obligations by the establishment and funding of a lease-specific abandonment account as alternatives to traditional supplemental bonds. These alternatives are specifically addressed in this rule. A third-party guarantor need not qualify as a surety with the Department of the Treasury (Treasury) but must agree to fully perform all lease obligations without the dollar limitation permitted a surety under this rule.

Our objectives for this rule are to: (1) Ensure a lessee's financial capability to perform its lease obligations; (2) protect the environment from threat of harm that might result from a lessee's failure to timely carry out proper well abandonment and site clearance operations; (3) achieve a reasonable degree of protection from default by a lessee, permittee, or pipeline right-of-way holder at a minimum increase in costs for lease, permit, or pipeline operations; and (4) select a method for attaining these goals that equitably affects all parties.

This rule implements the changes proposed by our notice of proposed rulemaking (NPRM) that was published December 8, 1995 (60 FR 63011). We received 17 sets of comments and recommendations in response to that NPRM. Four of those comments and recommendations were from industry associations, and 13 were from lessees or operators. We have carefully considered each of these comments and recommendations. We did not adopt the recommendations that did not appear to be in the public's best interest.

We rewrote the requirements of the rule in plain English and for technical accuracy. These additional revisions describe more clearly how the current rule works and do not affect the substance of the rule.

Nothing in this rule (e.g., the levels of bond coverage required) is intended to limit the obligations of either a lessee, the holder of an OCS pipeline right-of-way, or the holder of a G&G exploration permit, to fulfill all the requirements of the lease, right-of-way, or permit and any applicable regulations.

Discussion and Analysis of Comments

Comment: Many respondents indicated that they are ''supportive of'' or ''understand'' MMS's goal to insure against default of obligations by underfunded entities owning leases, rights-of-way, or exploration permits.

Response: We appreciate these expressions of understanding and support for our goal to ensure that financial obligations are properly addressed by the responsible party. Lessees must plug and abandon lease wells, remove platforms and other facilities, and clear the seafloor of obstructions at a time when their lease operations are no longer generating income. We, therefore, need assurances that OCS lessees have means for funding their lease abandonment and cleanup obligations.

Similarly, the holder of a pipeline right-of-way must remove all platforms, structures, domes over valves, pipes, taps, and valves along the right-of-way in compliance with our regulations at a time when its pipeline operation no longer generates income. Thus, we need assurances that the holder of an OCS pipeline right-of-way has a means for funding its right-of-way abandonment obligations.

Section-by-Section Analysis

Part 250—Oil and Gas and Sulphur Operations in the OCS

Section 250.8 Designation of operator. We have combined a portion of the provisions of proposed § 256.62(f) with the current provisions of § 250.8 and modified the text of the resulting provision to present the requirements in plain English. Since joint and several liability is closely related to the requirement for the designation of an operator, we have consolidated several provisions of the proposed rule in a revised § 250.8, though the proposed rule did not propose amendment of § 250.8. Every lessee or working interest owner who executes the designation of operator required under the provisions of § 250.8, Form MMS–1123, acknowledges its joint and several liability.

Comment: Twelve respondents expressed opposition to, or lack of support for, what they characterized as ''the effort to establish joint and several liability between co-lessees or between assignors and assignees of OCS leases.''

Response: This rule simply clarifies our position that nonmonetary lease obligations are joint and several among co-lessees (i.e., multiple lessees) and owners of operating rights. Section 5(a)(2)(C)(II) of the Outer Continental Shelf Lands Act (OCSLA) equates multiple lessees to ''partners.''

Our position on this matter remains the same as it was May 10, 1954, the effective date of the regulations the Department of the Interior (DOI) issued to implement the OCSLA of 1953. Section 250.31 of the May 1954 regulations required a designation of operator just as the current provisions of § 250.8, Designation of operator, do today in ''all cases where operations are not conducted by an exclusive owner of record * * *''

As previously noted, each party that executes a designation of operator agreement recognizes the joint and several nature of OCS lease obligations. The designation of operator (Form MMS–1123) designates the entity that the co-lessees authorize to conduct lease operations as each of the co-lessee's ''operator and local agent.'' Each lessee, by execution of the designation of operator, agrees that ''In case of default on the part of the designated operator, the signatory lessee will make full and prompt compliance with all regulations, lease terms, or orders of the Secretary of the Interior (Secretary) or his representative.''

Section 250.110 General requirements. *Comment:* Two respondents recommended that paragraph (b) of § 250.110, General requirements, be changed to clarify the extent of responsibility of prior lessees for obtaining compliance with accrued obligations.

Response: We have modified the text of this provision to present its contents in easily understood English. While this rule determines who is liable to MMS for performance of nonmonetary obligations, it is not our intention that this rule preclude private agreements concerning the allocation of liabilities between and among the affected parties. Nor does this rule specify against whom

we will take enforcement action if we discover noncompliance.

Comment: Two respondents expressed support for MMS's position on joint and several liability as the ''most practical approach'' or as ''understandable and acceptable.'' One respondent observed that it seems practical for multiple lessees of a single tract to police themselves in assuring the financial capability of each participant and in making appropriate arrangements to provide for property abandonment through a joint operating agreement that could include, among other things, escrow funds and third party guarantees.

Response: We appreciate these expressions of support. We agree that multiple lessees of a single tract should, as a matter of good business practice, police themselves in assuring the financial capability of each participant. The multiple lessees of a single tract need to make appropriate arrangements to provide for proper well abandonment and lease clearance. These arrangements may be in the form of a joint operating agreement that funds lease-specific abandonment accounts.

Comment: Eleven respondents urged MMS to abandon its joint and several liability proposal and instead to adopt in full the recommendations of the Ad Hoc Lease Abandonment and Bonding Issues Committee as a more reasonable approach.

Response: We have not adopted this suggestion. Adoption of some of the committee's recommendations does not appear to be in the public interest. For example, the committee's report provided no supporting justification for its recommendation for a reduction in royalty. A royalty reduction to fund lease abandonment and clearance liabilities would be a direct transfer of the lessee's financial obligations and responsibilities to the American taxpayer. Also, we cannot support severance of assignor liability. We do not have authorized funds available to correct a noncompliance or default when an assignee defaults. Correction of a noncompliance or default could be especially troublesome if the cost of correction exceeds the funds available under a forfeited bond and other security. Lastly, we are concerned that implementation of the committee's recommendations on lessee pro-rata responsibility would create a major increase in administrative burden for industry and Government without an appreciable reduction in risk to the Government.

Comment: A trade organization commented that the imposition of joint and several liability should be prospective only because the Secretary has no authority to issue retroactive rules.

Response: This rule merely codifies what has been the law under the OCSLA, since enactment and the common law. As previously noted, section 5(a)(2)(C)(II) of the OCSLA describes those who jointly own interests in a lease as ''partners.''

Comment: A trade organization stated, with respect to joint and several liability, that absent an express rule on the subject at the time of the lease, one should look to the common law to understand what the parties understood their contract to mean. It cites *Resolution Trust Corporation* v. *Feldman,* 3 F.3d 5 (1st Cir. 1993) for the proposition that parties to a contract may agree to limit the liability of each of several promisors.

Response: While parties to a contract may agree to limit liability, neither Congress nor the Secretary ever agreed to limit the liabilities of OCS lessees for operational obligations. The relevant common law rule is that stated in *Restatement of the Law of the Contracts, Second* § 289(1):

> Where two or more parties to a contract promise the same performance to the same promisee, each is bound for the whole performance thereof, whether his duty is joint, several, or joint and several . * * * A promise in the first person singular, signed by several persons, creates joint and several liability.

Indeed Resolution Trust Corporation concerned two different obligations: one on which the parties had agreed to limit particular parties to particular amounts of liability and another on which they had not. Absent specific provisions limiting promisors to particular sums, the court held the parties jointly and severally liable for the full amount of costs and fees. 3 F.d at 10.

Moreover, under the common law and the jurisprudence of the oil producing regions, when a lessee assigns an undivided interest in its lease to another, each of them is jointly and severally responsible for the performance of the lease covenants. *Hafeman* v. *Gem Oil Co.,* 80 N.W. 139, 163 (Nebr. 1956); *Problems Presented by Joint Ownership of Oil, Gas, and Other Minerals,* 32 Tex. L. Rev. 699, 715 (1954); Willis, *Thornton on the Law of Oil and Gas* § 341 (5th ed., 1932).

Comment: A trade association believes that when MMS requires parties submitting joint bids to state on the bid form the proportionate interest of each participating bidder, MMS limits the liability of each joint bidder. The comment states that, by allowing parties to designate percentage ownership interests, MMS has created a ''rule of property.''

Response: MMS has never given its imprimatur to efforts of lessees to limit their liabilities to MMS, much less created a property right to such limitations. The commenter does not point to any language in the lease instrument, bid form, or regulations that suggests that the opportunity for bidders to state their proportionate interests is intended to limit the promise of each such bidder to perform fully the terms of the lease. It is clear from the context of the lease sale notice that the purpose of requiring such statements of proportionate interest from joint bidders is to facilitate enforcement of the restrictions on joint bidding in 30 CFR part 256, subpart G and 30 CFR part 260, subpart D. Those regulations attribute proportionate shares of production of jointly held leases in determining whether those filing a joint bid exceed the average daily production limit of 1.6 million barrels a day.

Comment: A trade association criticized the joint and several liability provision on the grounds that MMS relied on the concept of ''indivisibility,'' a concept drawn from the common law of torts, to support its position that the operational obligations of a lease are joint and several obligations.

Response: MMS does not rely on ''indivisibility'' as the legal rationale for its regulation concerning the obligations of holders of undivided interests but on the contract and oil and gas and property law concepts cited in our responses to earlier comments. MMS used the notion of ''indivisibility'' to explain its policy choice in treating nonmonetary obligations differently than monetary obligations were treated in the proposed payor liability rule and the Royalty Simplification and Fairness Act. It does not serve the purposes of OCSLA for lessees of undivided interests in a lease to be freed, after mere partial performance, of the obligation to plug a well or remedy an oil spill.

Section 250.159 General requirements for a pipeline right-of-way grant.

Comment: A respondent expressed concern that the bond coverage requirements for pipeline right-of-way holders ($300,000) and G&G exploration permittees ($200,000) may prove to be troublesome for many existing permit holders. Another respondent suggested that the decision to require additional bonding should be tied to some of the same factors that are used to determine that supplemental bond coverage is needed for a lease.

Response: A properly funded holder of a pipeline right-of-way or G&G permit to drill a deep stratigraphic test well (§ 251.6–4) should not find compliance with this rule troublesome. This rule continues the level of bond coverage required of an applicant for a pipeline right-of-way at $300,000. The rule also provides specific regulatory authority for the Regional Director to require the holder of a right-of-way or the holder of a G&G permit to drill a deep stratigraphic test well to provide additional bond coverage. We expect the Regional Director to use factors similar to those used to determine that a supplemental bond is required under a lease. However, due to the differences between pipeline and lease operations, we have not adopted language specifying the factors that the Regional Director will use to determine that a supplemental bond is needed by a pipeline operator or permit holder. We have revised the text of §§ 250.159 and 251.6–4 to present the requirements of these provisions in plain English.

Part 256—Leasing of Sulphur or Oil and Gas in the OCS

Section 256.7 Cross references. We have added a new paragraph (b) to § 256.7 that cross references MMS's regulations governing appeals to orders and decisions issued under the regulations in 30 CFR part 256.

Subpart I—Bonding

Section 256.52 Requirement to file a bond.

Comment: One respondent suggested an editorial change to proposed § 256.52, Requirement to file a bond, to clarify the intent of the provision.

Response: We have rewritten and renamed this provision to more clearly state the intent of the provision. Section 256.52 (formerly § 256.58) has been renamed ''Bond requirements for an oil and gas or sulphur lease.'' Our rewrite of the provisions of this section includes a rewrite of paragraph (e) and a new paragraph (h) to consolidate provisions addressing the need to replace a bond. We had not proposed to revise paragraph (e). Paragraph (c) clarifies that while an operator's bond may be substituted for a lease bond, an operator's bond may not be substituted for an areawide bond. Paragraph (f) codifies in our rule the Treasury Department's requirement that a pledge of Treasury Securities must be accompanied by authority to sell the securities in case of default. The new paragraph (h) incorporates portions of former § 256.58 (d) and (e) concerning the consequence of failure to replace a bond. Our rewrite of the proposed section, including our rewrite of former § 256.58(e), does not alter the requirements from those of the proposed rule.

Section 256.53 Additional bonds. We have revised the proposed text of § 256.53 (formerly § 256.61) to present the requirements of the provision in plain English.

We had proposed to require all OCS lessees to come into compliance with the levels of bond coverage established in the 1993 rule for new actions within 2 years of the final rule. This rule establishes December 8, 1997, as the deadline for each OCS lessee to comply with the lease bond coverage required at the development stage of its lease. A full year has already lapsed, and MMS has concluded that all lessees should be able to come into compliance by that date which is 2 years from publication of the proposed rule and 4 years after these levels of coverage became effective for new approvals.

The following table sets forth the levels of bond coverage required for each stage of lease development.

Stages of development	Lease bond	Areawide bond
Issuance of Lease	$50,000	$300,000
EP approval	200,000	1,000,000
DPP and DOCD approval	500,000	3,000,000

Comment: Three respondents indicated that MMS should review its policy of ''only requiring the operator'' to post a bond to cover lease obligations. They felt that everyone who owns a working or operating interest in a producing lease should have to post a bond and that, should the co-interest owners wish to agree *voluntarily* among themselves to allocate this responsibility, they should have the option to do so. Other respondents expressed the view that a requirement that each and every lessee and owner of other interests in an OCS lease submit and maintain a lease bond commensurate with its ownership in an OCS lease(s) could effectively deny independent producers sources of investment capital that historically have provided financial assistance for their conduct of oil and gas operations. Other respondents expressed the view that, from a practical standpoint, if a supplemental bond is not required because of the financial strength of one of the interest owners (i.e., one lessee), other lessees should not be required to furnish a supplemental bond.

Response: We do not have a policy of ''only requiring the operator'' to post a bond to cover lease obligations. We require the lessee to provide a bond that guarantees compliance with all the terms and conditions of the lease (i.e., a bond that covers all lease operations and obligations). However, we do permit an operator to provide bond coverage for a lease. Where there are multiple lessees, the bond provided by a lessee or the operator protects against noncompliance by all lessees, operating rights owners, and operators. As noted by some respondents, a requirement that everyone who owns an interest in a lease post a separate bond could effectively deny independent producers sources of investment capital that historically have provided financial assistance for their conduct of oil and gas operations. Since lessees are jointly and severally responsible for compliance with lease terms and conditions, it is not necessary, desirable, or practical to require that every owner of an interest in a lease submit and maintain a separate lease bond that only addresses its interest.

While this rule determines who is liable to MMS for performance of nonmonetary obligations, this rule is not intended to preclude agreements among the co-lessees or between assignors and assignees to apportion among themselves responsibility for such obligations. However, such agreements will not affect the parties' obligations to the United States under this rule.

Comment: A trade association advocates that all working interest holders be required to post supplemental bonds and not be allowed to ''hide behind'' a deep pocket.

Response: MMS has not concluded that it is necessary to require bonding in an amount equal to 100 percent of lease obligations in every case. A supplemental bond will be required only when MMS has reason to believe that the usual security requirements are inadequate to ensure performance of lease obligations. However, nothing in these regulations precludes any party from entering into arrangements with its partners to ensure full participation in the costs of compliance or bonding. MMS agrees that all bonds accepted must guarantee compliance by all record title-holders, all operating rights owners, and all operators on the lease premises and has so amended the regulation at § 256.54(a).

Section 256.54 Bond form. We have added a new paragraph (a) to § 256.54 ''General requirements for bonds,'' that more clearly states that any bond or other security provided under part 256 must be payable on demand by the Regional Director and guarantee compliance with all the lessee's obligations under the lease.

Comment: One respondent questioned the intent of § 256.54, which provides that surety bonds are to be noncancellable, since §§ 256.58 (a) and (b) allow for cancellation of bonds and MMS bond (Form MMS–2028) contains a cancellation clause.

Response: The commenter is correct that it was not our intention to preclude cancellation under the specific circumstances provided in § 256.58(b). It was our intention to clarify that, as provided in the approved MMS bond (Form MMS–2028), an event that might give rise to a performance or payment defense by a surety, or serve to diminish, terminate, or cancel a surety obligation, under State surety law, does not modify the surety's obligation under an MMS approved bond. We expect the surety under an MMS bond to continue to waive such defenses and to avoid any risk it considers unacceptable by following the process provided in § 256.58(a) to terminate the period of liability under its bond. We have modified § 256.54(d) to clearly state that bonds continue in force even though an event occurs that could diminish, terminate, or cancel a surety obligation under State surety law. We have also revised the text of § 256.58(b) to more clearly express the intent of § 256.54 (i.e., a bond will be released only under circumstances that include the submission and maintenance of a replacement bond or other form of security that specifically assumes the liabilities of the ''canceled'' bond as provided in § 256.58(b) or the Regional Director determines that there are no outstanding obligations).

Section 256.55 General terms and conditions of bond. Comment: One respondent recommended changes to paragraphs (d) and (e) of § 256.55, General terms and conditions of bond, to clarify that the rule was not intended to require notice of hearsay reports of insolvency.

Response: We have revised this provision to address only actual court filings. We have renamed § 256.55, ''Lapse of bond,'' and revised the text of the section to more clearly state that the lessee must promptly provide acceptable new bond coverage when its bond coverage lapses.

Section 256.56 Lease-specific abandonment accounts. Comment: Three respondents recommended that MMS establish a type of account with the Federal banking system that would allow lessees to deposit the required amounts into lease-specific abandonment accounts on a fully insured basis in trust for the benefit of MMS in the event a lessee fails to fully meet its end-of-lease obligations.

Response: We have revised the language of the rule to provide assurance that funds deposited in a lease-specific abandonment account will be available, if needed. The new language better describes the way funds in lease-specific abandonment accounts are to be handled. As funds accumulate in a lease-specific abandonment account in a federally insured institution, the managing institution will purchase Treasury securities pledged to MMS. The Treasury securities pledged to MMS will be purchased before the amount in the account equals the maximum insurable amount, as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The managing institution and the Regional Director may establish a Federal Reserve Circular 154 account to hold Treasury securities pledged to MMS, or the Regional Director may allow the managing institution to hold the pledged Treasury securities in a separate trust account (§ 256.56(d)).

Section 256.57 Third-party guarantee. The proposed text of § 256.57 has been revised to present the requirements of that section in plain English, and § 256.57 has been renamed ''Using a third-party guarantee instead of a bond.''

Section 256.56, Lease-specific abandonment accounts and § 256.57, Using a third-party guarantee instead of a bond, establish regulatory regimes under which we may accept alternate methods for funding lease abandonment and clearance obligations. A third-party guarantee or a supplemental bond may cover specific obligations, such as plugging and abandonment of specified leases or wells. However, the acceptance of a supplemental bond or guarantee limited to lease abandonment obligations will depend on how well the combination of all bonds and guarantees ensures that the full range of obligations will be met.

Section 256.58 Termination of the period of liability and cancellation of a bond. Comment: One respondent requested clarification of a number of issues relating to the use of the current OCS bond (Form MMS–2028) under § 256.58(a) and (b) and asked whether another form of bond would be needed under § 256.58(b). The respondent also questioned whether other forms of security including the new forms of third-party guarantees and escrow accounts could be used as replacements under § 256.58(a) and (b).

Response: We have revised the text of § 256.58, Termination of the period of liability and cancellation of a bond, to present the requirements of the rule in plain English. Subsection 256.58(b) spells out the circumstances under which a surety may be released from all further liability. Replacement security can be in any form that would be acceptable to MMS for a new lease, except that the security furnished in substitution for a terminated lease bond on which the Regional Director has not determined that all outstanding obligations have been performed will have to include a specific provision under which the surety agrees to assume all outstanding liabilities under the bond that is to be terminated under § 256.58(b).

Comment: One respondent recommended that, when all operations on a lease have ceased and abandonment and removal operations have been completed, MMS give a release to the lessees in a form that enables sureties and bonding companies to release their bond without further recourse or liabilities.

Response: We have not adopted this recommendation. Lessees and the guarantors of lessee compliance with lease terms and conditions remain responsible for the effectiveness of their compliance efforts such as lease abandonment and clearance work, subject to any applicable statute of limitations. The current bond form specifies a period of 6 years during which, under specified circumstances, a bond may be reinstated to cover liabilities that accrued during the period of bond coverage. It may be that this provides sufficient protection for MMS without total prohibition of bond cancellation. We will continue to review this issue. If we determine that additional changes in the rule are appropriate, we will propose those changes in a new rulemaking. We welcome any comments you may want to provide concerning the need for additional changes to the rule or approved bond form concerning release of bonds.

Section 256.59 Forfeiture of bonds and/or other securities. The proposed rule had provided that the Regional Director could require forfeiture of a bond upon the refusal or inability of ''a lessee'' to perform the obligations. Frequently, of course, there may be a number of record title owners, and the party providing the bond might be an operator who is not itself a lessee. As the singular language of the rule suggested, MMS intended to be able to pursue forfeiture of the bond after a demand against the single lessee or operator who provided the surety bond before proceeding against the bond. MMS should not have to pursue every interest holder for performance before

securing the benefits of a bond where the bonded party is jointly and severally liable for the obligations not performed. The surety would have the right to proceed against the responsible record title-holder or operating rights owners for contribution. In the final rule, we have added a paragraph (b) to make completely clear that making demands against obligors other than the party providing the bond is not a prerequisite to making a claim against the bond.

Comment: One respondent recommended that § 256.59(d)(1) be changed to clarify that it is the lessee(s) of the lease and its (their) third-party guarantor(s) at the time of a default who will first be required to bear the cost of compliance above the forfeited bond or security amount.

Response: We have revised § 256.59, Forfeiture of bonds and/or other securities, to present the requirements of the provision in plain English. The final provision clearly states that, when a surety chooses to take action to bring a lease into compliance in lieu of forfeiture of its bond, it commits to complete that action even if the cost exceeds the face amount of the bond or other security instrument. At the time of a default, or a threat of a default, we expect that we will look to the current lessee to bring the lease into compliance. However, if we determine that the current lessee is unable to perform, we will look to others.

Section 256.62 Assignment of leases or interests therein. Comment: A trade association raises numerous policy arguments against the policy of holding assignors responsible after assignment for obligations that accrued before assignment.

Response: The commenter is objecting to a rule that dates back to 1954. See § 201.60 of the May 1954 regulations and current § 256.62(d), both of which state that assignors continue to be responsible for obligations that accrued before the approval of an assignment. MMS is not persuaded that that rule should be changed. This rulemaking simply amends § 250.110 to specify when the obligation to plug and abandon accrues, so as to avoid confusion as to the application of existing § 256.62(d) to these important obligations. While an assignee becomes responsible directly to the lessor for the performance of the lease obligations, under contract law the assignor is not relieved of its obligations unless the lessor expressly discharges the assignor in writing. We do not discharge the assignor of its accrued obligations when we approve the assignment of record title in a lease. We have renamed § 256.62, ''Assignment of leases or interests in leases,'' and rewritten the text to present the requirements of the provision in plain English.

Comment: Two respondents suggested that an assignor should not be liable for increases in the end-of-lease obligations arising during the period of time between the effective date of assignment and the approval date of assignment.

Response: We have not adopted this recommendation. An assignor continues to be responsible for obligations that accrued before approval of the assignment. The parties to an assignment often ask that the effective date of the assignment be a date that is substantially in advance of the date that we receive the request for approval of the assignment. An assignor cannot escape its liability for an obligation by requesting an effective date for its assignment that predates the obligation.

Comment: Several commenters urged that interest holders be given the opportunity to object to a co-lessee's proposal to assign its interest to a party whom the co-owner believes to present an unreasonable risk.

Response: Nothing in MMS regulations precludes interest holders in leases from entering into agreements requiring co-owner concurrence in assignments. However, MMS does not believe it necessary or helpful to universally impose such a requirement. Also, we do not believe that MMS should be responsible for enforcing such agreements.

Comment: Five respondents expressed the view that the requirement that assignors retain liability after the effective date of a subsequent assignment will and probably has caused the early plugging and abandonment of wells and facilities or the nondevelopment of properties that were uneconomic for larger companies to operate or develop but could or would have been economic for a smaller independent.

Response: This requirement has been part of the offshore regulations since 1954, and we are not aware of evidence that it has resulted in premature abandonment of production. We have specific regulatory requirements that are designed to prevent the premature abandonment of recoverable reserves. Section 250.110, General requirements, specifically provides that ''no production well shall be abandoned until its lack of capacity for further profitable production of oil, gas, or sulphur has been demonstrated to the satisfaction of the District Supervisor.''

Section 256.64 Requirements for filing transfers. Comment: One respondent recommended that § 256.64(g) be revised to clarify the extent to which holders of operating rights and sublessees in a lease are jointly and severally liable with the lessees.

Response: We have renamed § 256.64, ''How to file transfers,'' and revised the text of paragraphs 256.64(a), (c), and (g) to present the requirements of the rule in plain English. The new style clearly describes the extent to which owners of working interests (e.g., the holders of operating rights) and sublessees are liable. We also clarified which assignments must be filed but need not be approved by the Regional Director.

We modified §§ 251.6–4, 256.54, 281.33 and 282.40 to reflect delegations of authority to the Associate Director for Offshore Minerals Management.

Authors

This document was prepared by Gerald D. Rhodes and John V. Mirabella of the Engineering and Operations Division, MMS and M. Dennis Daugherty of the DOI's Office of the Solicitor.

Executive Order (E.O.) 12866

This rule does not meet the criteria for a significant rule requiring review by the Office of Management and Budget (OMB) under E.O. 12866.

Regulatory Flexibility Act

This rule will not have a significant effect on a substantial number of small entities. This rule establishes December 8, 1997, as the deadline for OCS oil and gas lessees to bring their bond coverage into compliance with the new levels of coverage established in 1993; clarifies our position that co-lessees are jointly and severally liable for compliance with nonmonetary obligations arising under OCS oil and gas and sulphur leases; clarifies our position on the responsibility of each assignor and assignee for compliance with lease obligations; establishes regulatory frameworks for acceptance of lease-specific abandonment accounts and third-party guarantees; and modifies the bond coverage that may be required of the holder of a pipeline right-of-way or of a G&G exploration permit to drill a deep stratigraphic test well.

Offshore oil and gas lease exploration and development costs often exceed $10 million while typical abandonment and clearance costs for OCS oil and gas leases range from $3.25 million for leases in less than 50 feet of water to $94 million for leases in excess of 400 feet of water. In general, the entities that engage in offshore oil and gas exploration, development, and production activities, including pipeline transportation across the OCS, are not firms that would be considered small

due to the technical expertise, financial resources, and experience necessary to safely conduct such activities in an environmentally responsible manner.

Small entities who are likely to work on the OCS are primarily contractors who provide services such as catering and custodial services for manned facilities. This rule will not affect these activities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB previously approved the collection of information contained in the regulations affected by this rule. The OMB control number is 1010–0006 for 30 CFR part 256 (Leasing of Sulphur or Oil and Gas in the OCS). The OMB control numbers and pertinent information are included in § 250.0 for 30 CFR part 250 (Oil and Gas and Sulphur Operations in the OCS) and in § 251.0 for 30 CFR part 251 (Geological and Geophysical Explorations in the OCS). MMS has examined this rule under the Paperwork Reduction Act of 1995 and determined that it contains no new information collection requirements.

MMS collects the information under regulations implementing the OCSLA, as amended. MMS uses the information to determine the conditions under which the applicant filing for a lease on the OCS will be permitted to hold such a lease. The information is required to obtain or retain a benefit under 43 U.S.C. 1331 *et seq.* MMS will protect information considered confidential or proprietary under applicable law and under regulations at 30 CFR 251.14–1, Disclosure of information and data to the public; 30 CFR part 252, Outer Continental Shelf (OCS) Oil and Gas Information Program; and 30 CFR 256.10, Information to States.

MMS estimates the annual reporting burden for 30 CFR part 256 to be approximately 17,000 hours—an average of 3.5 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this collection to the Information Collection Clearance Officer, Mail Stop 2200, Minerals Management Service, 381 Elden Street, Herndon, VA 20170–4817; and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Desk Officer for the Interior Department (1010–0006), 725 17th Street, N.W., Washington, DC 20503.

Takings Implication Assessment

DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

E.O. 12988

DOI has certified to OMB that the rule meets the applicable civil justice reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

National Environmental Policy Act

DOI determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

DOI has determined and certifies according to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on State, local, and tribal governments, or the private sector.

List of Subjects

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Research.

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Incorporation by reference, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

30 CFR Part 281

Administrative practice and procedures, Bonds, Continental shelf, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 282

Administrative practice and procedure, Bonds, Continental shelf, Environmental protection, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: May 9, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, Minerals Management Service (MMS) amends 30 CFR parts 250, 251, 256, 281 and 282 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 is revised to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

2. Section 250.8 is revised to read as follows:

§ 250.8 Designation of operator.

This section explains the requirement for designation of an operator to conduct operations on a lease where the operator is not the sole lessee (record title owner) and owner of operating rights.

(a) Each record title owner (lessee) or operating rights owner for a lease must provide the Regional Supervisor a designation of operator in each case where someone other than an exclusive record title and operating rights owner will conduct lease operations. The designated operator must not begin operations on the lease until the Regional Supervisor receives the designation of operator.

(1) This designation of operator is authority for the operator to act on behalf of each lessee and operating rights owner and to fulfill each of their obligations under the Act, the lease, and the regulations in this part.

(2) You must immediately notify the Regional Supervisor in writing if you terminate the designation of operator.

(3) If you terminate a designation of operator or a controversy develops between you and your designated operator, you and the operator must protect the lessor's interests.

(4) You or the lease operator must immediately notify the Regional Supervisor in writing of any change of address.

(b) Lessees and operating rights owners are jointly and severally responsible for performing nonmonetary lease obligations, unless otherwise provided in the regulations in this chapter. If the designated operator fails to perform any obligation under the lease or the regulations in this chapter, the Regional Director may require any or all of the co-lessees and operating rights owners to bring the lease into compliance.

3. In § 250.110, the existing paragraph is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 250.110 General requirements.

* * * * *

(b) Lessees must plug and abandon all well bores, remove all platforms or other facilities, and clear the ocean of all obstructions to other users. This obligation:

(1) Accrues to the lessee when the well is drilled, the platform or other facility is installed, or the obstruction is created; and

(2) Is the joint and several responsibility of all lessees and owners of operating rights under the lease at the time the obligation accrues, and of each future lessee or owner of operating rights, until the obligation is satisfied under the requirements of this part.

4. In § 250.159, paragraph (b)(1) is revised to read as follows:

§ 250.159 General requirements for a pipeline right-of-way grant.

* * * * *

(b)(1) When you apply for, or are the holder of, a right-of-way, you must:

(i) Provide and maintain a $300,000 bond (in addition to the bond coverage required in part 256) that guarantees compliance with all the terms and conditions of the rights-of-way you hold in an OCS area; and

(ii) Provide additional security if the Regional Director determines that a bond in excess of $300,000 is needed.

* * * * *

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

5. The authority citation for part 251 is revised to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

6. Section 251.6–4 is revised to read as follows:

§ 251.6–4 Bonds.

(a) When you apply to the Minerals Management Service (MMS) for a permit authorizing the drilling of a deep stratigraphic test well, you must either:

(1) Furnish a bond of not less than $200,000 that guarantees compliance with all the terms and conditions of the permit; or

(2) Maintain a $1 million bond that guarantees compliance with all the terms and conditions of the permits you hold for the OCS area where you propose to drill.

(b) You must provide additional security to MMS if the Regional Director determines that it is necessary for the permit or area.

(c) The Regional Director may require you to provide a bond, in an amount the Regional Director prescribes, before authorizing you to drill a shallow test well.

(d) Your bond must be on a form approved by the Associate Director for Offshore Minerals Management.

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

7. The authority citation for part 256 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

8. In § 256.7, paragraphs (b) through (h) are redesignated paragraphs (c) through (i), and a new paragraph (b) is added to read as follows:

§ 256.7 Cross references.

* * * * *

(b) For MMS regulations governing the appeal of an order or decision issued under the regulations in this part, see 30 CFR part 290.

* * * * *

9. Section 256.47 is amended by revising the fourth sentence of paragraph (f) as follows:

§ 256.47 Award of leases.

* * * * *

(f) * * * The bidder must also file a bond as required in § 256.52 of this title. * * *

* * * * *

10. Section 256.58 is redesignated as § 256.52, and revised to read as follows:

§ 256.52 Bond requirements for an oil and gas or sulphur lease.

This section establishes bond requirements for the lessee of an OCS oil and gas or sulphur lease.

(a) Before MMS will issue a new lease or approve the assignment of an existing lease to you as lessee, you or another record title owner for the lease must:

(1) Maintain with the Regional Director a $50,000 lease bond that guarantees compliance with all the terms and conditions of the lease; or

(2) Maintain a $300,000 areawide bond that guarantees compliance with all the terms and conditions of all your oil and gas and sulphur leases in the area where the lease is located; or

(3) Maintain a lease or areawide bond in the amount required in § 256.53(a) or (b) of this part.

(b) For the purpose of this section, there are four areas:

(1) The Gulf of Mexico;

(2) The area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii;

(3) The area offshore the Coast of Alaska; and

(4) The area offshore the Atlantic Coast.

(c) The requirement to maintain a lease bond (or substitute security instruments) under paragraph (a)(1) of this section and § 256.53 (a) and (b) is satisfied if your operator provides a lease bond in the required amount that guarantees compliance with all the terms and conditions of the lease. Your operator may not use an areawide bond under this paragraph to satisfy your bond obligation.

(d) If a surety makes payment to the United States under a bond or alternate form of security maintained under this section, the surety's remaining liability under the bond or alternate form of security is reduced by the amount of that payment. See paragraph (e) of this section for the requirement to replace the reduced bond coverage.

(e) If the value of your surety bond or alternate security is reduced because of a default, or for any other reason, you must provide additional bond coverage sufficient to meet the security required under this subpart within 6 months, or such shorter period of time as the Regional Director may direct.

(f) You may pledge U.S. Department of the Treasury (Treasury) securities instead of a bond. The Treasury securities you pledge must be negotiable for an amount of cash equal to the value of the bond they replace.

(1) If you pledge Treasury securities under this paragraph (f), you must monitor their value. If their market value falls below the level of bond coverage required under this subpart, you must pledge additional Treasury securities to raise the value of the securities pledged to the required amount.

(2) If you pledge Treasury securities, you must include authority for the Regional Director to sell them and use the proceeds when the Regional Director determines that you fail to satisfy any lease obligation.

(g) You may pledge alternate types of security instruments instead of providing a bond if the Regional Director determines that the alternate security protects the interests of the United States to the same extent as the required bond.

(1) If you pledge an alternate type of security under this paragraph, you must monitor the security's value. If its market value falls below the level of bond coverage required under this subpart, you must pledge additional securities to raise the value of the securities pledged to the required amount.

(2) If you pledge an alternate type of security, you must include authority for the Regional Director to sell the security and use the proceeds when the Regional Director determines that you failed to satisfy any lease obligation.

(h) If you fail to replace a deficient bond or to provide additional bond coverage upon demand, the Regional Director may:

(1) Assess penalties under part 250, subpart N of this chapter;

(2) Suspend production and other operations on your leases in accordance with § 250.10 of this chapter; and

(3) Initiate action to cancel your lease.

11. Section 256.61 of subpart I is redesignated as § 256.53 of subpart I; introductory texts are added to paragraphs (a) and (b); paragraphs (a)(1), (b)(1), and (d) are revised; and paragraphs (e), (f), and (g) are added to read as follows:

§ 256.53 Additional bonds.

(a) This paragraph explains what bonds the lessee must provide before lease exploration activities commence.

(1)(i) You must furnish the Regional Director a $200,000 bond that guarantees compliance with all the terms and conditions of the lease by the earliest of:

(A) The date you submit a proposed Exploration Plan (EP) for approval;

(B) The date you submit a request for approval of the assignment of a lease on which an EP has been approved; or

(C) December 8, 1997, for any lease for which an EP has been approved.

(ii) The Regional Director may authorize you to submit the $200,000 lease exploration bond after you submit an EP but before he/she approves drilling activities under the EP.

(iii) You may satisfy the bond requirement of this paragraph (a) by providing a new bond or by increasing the amount of your existing bond.

* * * * *

(b) This paragraph explains what bonds you (the lessee) must provide before lease development and production activities commence.

(1)(i) You must furnish the Regional Director a $500,000 bond that guarantees compliance with all the terms and conditions of the lease by the earliest of:

(A) The date you submit a proposed Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD) for approval;

(B) The date you submit a request for approval of the assignment of a lease on which a DPP or DOCD has been approved; or

(C) December 8, 1997, for any lease for which a DPP or DOCD has been approved.

(ii) The Regional Director may authorize you to submit the $500,000 lease development bond after you submit a DPP or DOCD, but before he/she approves the installation of a platform or the commencement of drilling activities under the DPP or DOCD.

(iii) You may satisfy the bond requirement of this paragraph by providing a new bond or by increasing the amount of your existing bond.

* * * * *

(d) The Regional Director may determine that additional security (i.e., security above the amounts prescribed in §§ 256.52(a) and 256.53 (a) and (b) of this part) is necessary to ensure compliance with the obligations under your lease and the regulations in this chapter.

(1) The Regional Director's determination will be based on his/her evaluation of your ability to carry out present and future financial obligations demonstrated by:

(i) Financial capacity substantially in excess of existing and anticipated lease and other obligations, as evidenced by audited financial statements (including auditor's certificate, balance sheet, and profit and loss sheet);

(ii) Projected financial strength significantly in excess of existing and future lease obligations based on the estimated value of your existing OCS lease production and proven reserves of future production;

(iii) Business stability based on 5 years of continuous operation and production of oil and gas or sulphur in the OCS or in the onshore oil and gas industry;

(iv) Reliability in meeting obligations based on:

(A) Credit rating(s); or

(B) Trade references, including names and addresses of other lessees, drilling contractors, and suppliers with whom you have dealt; and

(v) Record of compliance with laws, regulations, and lease terms.

(2) You may satisfy the Regional Director's demand for additional security by increasing the amount of your existing bond or by providing a supplemental bond or bonds.

(e) The Regional Director will determine the amount of supplemental bond required to guarantee compliance. The Regional Director will consider potential underpayment of royalty and cumulative obligations to abandon wells, remove platforms and facilities, and clear the seafloor of obstructions in the Regional Director's case-specific analysis.

(f) If your cumulative potential obligations and liabilities either increase or decrease, the Regional Director may adjust the amount of supplemental bond required.

(1) If the Regional Director proposes an adjustment, the Regional Director will:

(i) Notify you and the surety of any proposed adjustment to the amount of bond required; and

(ii) Give you an opportunity to submit written or oral comment on the adjustment.

(2) If you request a reduction of the amount of supplemental bond required, you must submit evidence to the Regional Director demonstrating that the projected amount of royalties due the Government and the estimated costs of lease abandonment and cleanup are less than the required bond amount. If the Regional Director finds that the evidence you submit is convincing, he/she may reduce the amount of supplemental bond required.

12. Section 256.59 of subpart I is redesignated as § 256.54 of subpart I, and revised to read as follows:

§ 256.54 General requirements for bonds.

(a) Any bond or other security that you, as lessee or operator, provide under this part must:

(1) Be payable upon demand to the Regional Director;

(2) Guarantee compliance with all of your obligations under the lease and regulations in this chapter; and

(3) Guarantee compliance with the obligations of all lessees, operating rights owners and operators on the lease.

(b) All bonds and pledges you furnish under this part must be on a form or in a form approved by the Associate Director for Offshore Minerals Management. Surety bonds must be issued by a surety that the Treasury certifies as an acceptable surety on Federal bonds and that is listed in the current Treasury Circular No. 570. You

may obtain a copy of the current Treasury Circular No. 570 from the Surety Bond Branch, Financial Management Service, Department of the Treasury, East-West Highway, Hyattsville, MD 20782.

(c) You and a qualified surety must execute your bond. When either party is a corporation, an authorized official for the party must sign the bond and attest to it by an imprint of the corporate seal.

(d) Bonds must be noncancellable, except as provided in § 256.58 of this part. Bonds must continue in full force and effect even though an event occurs that could diminish, terminate, or cancel a surety obligation under State surety law.

(e) Lease bonds must be:

(1) A surety bond;

(2) Treasury securities as provided in § 256.52(f);

(3) Another form of security approved by the Regional Director; or

(4) A combination of these security methods.

(f) You may submit a bond to the Regional Director executed on a form approved under paragraph (b) of this section that you have reproduced or generated by use of a computer. If you do this, and if the document omits terms or conditions contained on the form approved by the Associate Director for Offshore Minerals Management the bond you submit will be deemed to contain the omitted terms and conditions.

13. Sections 256.55 through 256.59 are added to subpart I to read as follows:

§ 256.55 Lapse of bond.

(a) If your surety becomes bankrupt, insolvent, or has its charter or license suspended or revoked, any bond coverage from that surety terminates immediately. In that event, you must promptly provide a new bond in the amount required under §§ 256.52 and 256.53 of this part to the Regional Director and advise the Regional Director of the lapse in your previous bond.

(b) You must notify the Regional Director of any action filed alleging that you, your surety, or guarantor are insolvent or bankrupt. You must notify the Regional Director within 72 hours of learning of such an action. All bonds must require the surety to provide this information to you and directly to MMS.

§ 256.56 Lease-specific abandonment accounts.

(a) The Regional Director may authorize you to establish a lease-specific abandonment account in a federally insured institution in lieu of the bond required under § 256.53(d). The account must provide that, except as provided in paragraph (a)(3) of this section, funds may not be withdrawn without the written approval of the Regional Director.

(1) Funds in a lease-specific abandonment account must be payable upon demand to MMS and pledged to meet the lessee's obligations under § 250.110 of this chapter.

(2) You must fully fund the lease-specific abandonment account to cover all the costs of lease abandonment and site clearance as estimated by MMS within the timeframe the Regional Director prescribes.

(3) You must provide binding instructions under which the institution managing the account is to purchase Treasury securities pledged to MMS under paragraph (d) of this section.

(b) Any interest paid on funds in a lease-specific abandonment account will be treated as other funds in the account unless the Regional Director authorizes in writing the payment of interest to the party who deposits the funds.

(c) The Regional Director may allow you to pledge Treasury securities that are made payable upon demand to the Regional Director to satisfy your obligation to make payments into a lease-specific abandonment account.

(d) Before the amount of funds in a lease-specific abandonment account equals the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, the institution managing the account must use the funds in the account to purchase Treasury securities pledged to MMS under paragraph (c) of this section. The institution managing the lease specific-abandonment account will join with the Regional Director to establish a Federal Reserve Circular 154 account to hold these Treasury securities, unless the Regional Director authorizes the managing institution to retain the pledged Treasury securities in a separate trust account. You may obtain a copy of the current Treasury Circular No. 154 from the Surety Bond Branch, Financial Management Service, Department of the Treasury, East-West Highway, Hyattsville, MD 20782.

(e) The Regional Director may require you to create an overriding royalty or production payment obligation for the benefit of a lease-specific account pledged for the abandonment and clearance of a lease. The required obligation may be associated with oil and gas or sulphur production from a lease other than the lease bonded through the lease-specific abandonment account.

§ 256.57 Using a third-party guarantee instead of a bond.

(a) *When the Regional Director may accept a third-party guarantee.* The Regional Director may accept a third-party guarantee instead of an additional bond under § 256.53(d) if:

(1) The guarantee meets the criteria in paragraph (c) of this section;

(2) The guarantee includes the terms specified in paragraph (d) of this section;

(3) The guarantor's total outstanding and proposed guarantees do not exceed 25 percent of its unencumbered net worth in the United States; and

(4) The guarantor submits an indemnity agreement meeting the criteria in paragraph (e) of this section.

(b) *What to do if your guarantor becomes unqualified.* If, during the life of your third-party guarantee, your guarantor no longer meets the criteria of paragraphs (a)(3) and (c)(3) of this section, you must:

(1) Notify the Regional Director immediately; and

(2) Cease production until you comply with the bond coverage requirements of this subpart.

(c) *Criteria for acceptable guarantees.* If you propose to furnish a third party's guarantee, that guarantee must ensure compliance with all lessees' lease obligations, the obligations of all operating rights owners, and the obligations of all operators on the lease. The Regional Director will base acceptance of your third-party guarantee on the following criteria:

(1) The period of time that your third-party guarantor (guarantor) has been in continuous operation as a business entity where:

(i) Continuous operation is the time that your guarantor conducts business immediately before you post the guarantee; and

(ii) Continuous operation excludes periods of interruption in operations that are beyond your guarantor's control and that do not affect your guarantor's likelihood of remaining in business during exploration, development, production, abandonment, and clearance operations on your lease.

(2) Financial information available in the public record or submitted by your guarantor, on your guarantor's own initiative, in sufficient detail to show to the Regional Director's satisfaction that your guarantor is qualified based on:

(i) Your guarantor's current rating for its most recent bond issuance by either Moody's Investor Service or Standard and Poor's Corporation;

(ii) Your guarantor's net worth, taking into account liabilities under its guarantee of compliance with all the

terms and conditions of your lease, the regulations in this chapter, and your guarantor's other guarantees;

(iii) Your guarantor's ratio of current assets to current liabilities, taking into account liabilities under its guarantee of compliance with all the terms and conditions of your lease and the regulations in this chapter and your guarantor's other guarantees; and

(iv) Your guarantor's unencumbered fixed assets in the United States.

(3) When the information required by paragraph (c) of this section is not publicly available, your guarantor may submit the information in the following table. Your guarantor must update the information annually within 90 days of the end of the fiscal year or by the date prescribed by the Regional Director.

The guarantor should submit—	that—
(i) Financial statements for the most recently completed fiscal year.	Include a report by an independent certified public accountant containing the accountant's audit opinion or review opinion of the statements. The report must be prepared in conformance with generally accepted accounting principles and contain no adverse opinion.
(ii) Financial statements for completed quarters in the current fiscal year.	Your guarantor's financial officer certifies to be correct.
(iii) Additional information as requested by the Regional Director.	Your guarantor's financial officer certifies to be correct.

(d) *Provisions required in all third-party guarantees.* Your third-party guarantee must contain each of the following provisions.

(1) If you, your operator, or an operating rights owner fails to comply with any lease term or regulation, your guarantor must either:

(i) Take corrective action; or

(ii) Be liable under the indemnity agreement to provide, within 7 calendar days, sufficient funds for the Regional Director to complete corrective action.

(2) If your guarantor complies with paragraph (d)(1) of this section, this compliance will not reduce its liability.

(3) If your guarantor wishes to terminate the period of liability under its guarantee, it must:

(i) Notify you and the Regional Director at least 90 days before the proposed termination date;

(ii) Obtain the Regional Director's approval for the termination of the period of liability for all or a specified portion of your guarantor's guarantee; and

(iii) Remain liable for all work and workmanship performed during the period that your guarantor's guarantee is in effect.

(4) You must provide a suitable replacement security instrument before the termination of the period of liability under your third-party guarantee.

(e) *Required criteria for indemnity agreements.* If the Regional Director approves your third-party guarantee, the guarantor must submit an indemnity agreement.

(1) The indemnity agreement must be executed by your guarantor and all persons and parties bound by the agreement.

(2) The indemnity agreement must bind each person and party executing the agreement jointly and severally.

(3) When a person or party bound by the indemnity agreement is a corporate entity, two corporate officers who are authorized to bind the corporation must sign the indemnity agreement.

(4) Your guarantor and the other corporate entities bound by the indemnity agreement must provide the Regional Director copies of:

(i) The authorization of the signatory corporate officials to bind their respective corporations;

(ii) An affidavit certifying that the agreement is valid under all applicable laws; and

(iii) Each corporation's corporate authorization to execute the indemnity agreement.

(5) If your third-party guarantor or another party bound by the indemnity agreement is a partnership, joint venture, or syndicate, the indemnity agreement must:

(i) Bind each partner or party who has a beneficial interest in your guarantor; and

(ii) Provide that, upon demand by the Regional Director under your third-party guarantee, each partner is jointly and severally liable for compliance with all terms and conditions of your lease.

(6) When forfeiture is called for under § 256.59 of this part, the indemnity agreement must provide that your guarantor will either:

(i) Bring your lease into compliance; or

(ii) Provide, within 7 calendar days, sufficient funds to permit the Regional Director to complete corrective action.

(7) The indemnity agreement must contain a confession of judgment. It must provide that, if the Regional Director determines that you, your operator, or an operating rights owner is in default of the lease, the guarantor:

(i) Will not challenge the determination; and

(ii) Will remedy the default.

(8) Each indemnity agreement is deemed to contain all terms and conditions contained in this paragraph (e), even if the guarantor has omitted them.

§ 256.58 Termination of the period of liability and cancellation of a bond.

This section defines the terms and conditions under which the Regional Director may terminate the period of liability of a bond or cancel a bond.

(a) When the surety under your bond requests termination of the period of liability under its bond, the Regional Director will terminate the period of liability under your bond and demand that you provide a replacement bond of equivalent amount.

(1) Termination of the period of liability under a bond does not release the surety of that bond.

(2) Your surety is responsible for all obligations and liabilities that accrue before the effective date of the Regional Director's termination of the period of liability under its bond.

(b) The Regional Director's cancellation or release of a bond may include lease obligations that accrue before the effective date of the cancellation only when:

(1) The Regional Director determines that there are no outstanding obligations; or

(2) You furnish a replacement bond:

(i) In which your new surety agrees to assume all outstanding liabilities under the bond that is to be canceled; and

(ii) That is in an amount equal to or greater than the amount of the bond that is to be canceled.

(c) The Regional Director will issue a written instrument to cancel or release your bond. This instrument will subject the bond to automatic reinstatement, as if no cancellation or release had occurred, if:

(1) A person makes a payment under the lease and the payment is rescinded or must be repaid by the recipient because the person making the payment is insolvent, bankrupt, subject to reorganization, or placed in receivership; or

(2) The responsible party represents to MMS that it has discharged its obligations under the lease and the representation is materially false when the bond is canceled, or released.

§ 256.59 Forfeiture of bonds and/or other securities.

This section explains how a bond or other security may be forfeited.

(a) The Regional Director will call for forfeiture of all or part of the bond, other form of security, or guarantee you provide under this part if:

(1) You (the party who provided the bond) refuse, or the Regional Director determines that you are unable, to comply with any term or condition of your lease; or

(2) You default under one of the conditions under which the Regional Director accepts your bond, third-party guarantee, and/or other form of security.

(b) The Regional Director may pursue forfeiture of your bond without first making demands for performance against any lessee, operating rights owner, or other person authorized to perform lease obligations.

(c) The Regional Director will:

(1) Notify you, the surety on your bond or other form of security, and any third-party guarantor, of his/her determination to call for forfeiture of the bond, security, or guarantee under this section.

(i) This notice will be in writing and will provide the reasons for the forfeiture and the amount to be forfeited.

(ii) The Regional Director must base the amount he/she determines is forfeited upon his/her estimate of the total cost of corrective action to bring your lease into compliance.

(2) Advise you, your third-party guarantor, and any surety, that you, your guarantor, and any surety may avoid forfeiture if, within 5 working days:

(i) You agree to, and demonstrate that you will, bring your lease into compliance within the timeframe that the Regional Director prescribes;

(ii) Your third-party guarantor agrees to, and demonstrates that it will, complete the corrective action to bring your lease into compliance within the timeframe that the Regional Director prescribes; or

(iii) Your surety agrees to, and demonstrates that it will, bring your lease into compliance within the timeframe that the Regional Director prescribes, even if the cost of compliance exceeds the face amount of the bond or other surety instrument.

(d) If the Regional Director finds you are in default, he/she may cause the forfeiture of any bonds and other security deposited as your guarantee of compliance with the terms and conditions of your lease and the regulations in this chapter.

(e) If the Regional Director determines that your bond and/or other security is forfeited, the Regional Director will:

(1) Collect the forfeited amount; and

(2) Use the funds collected to bring your leases into compliance and to correct any default.

(f) If the amount the Regional Director collects under your bond and other security is insufficient to pay the full cost of corrective actions he/she may:

(1) Take or direct action to obtain full compliance with your lease and the regulations in this chapter; and

(2) Recover from you, any co-lessee, operating rights owner, and/or any third-party guarantor responsible under this subpart all costs in excess of the amount he/she collects under your forfeited bond and other security.

(g) The amount that the Regional Director collects under your forfeited bond and other security may exceed the costs of taking the corrective actions required to obtain full compliance with the terms and conditions of your lease and the regulations in this chapter. In this case, the Regional Director will return the excess funds to the party from whom they were collected.

14. In § 256.62, the section heading is revised, introductory text is added, paragraphs (a), (d), and (e) are revised, and paragraph (f) is added to read as follows:

§ 256.62 Assignment of lease or interest in lease.

This section explains how to assign record title and other interests in OCS oil and gas or sulphur leases.

(a) MMS may approve the assignment to you of the ownership of the record title to a lease or any undivided interest in a lease, or an officially designated subdivision of a lease, only if:

(1) You qualify to hold a lease under § 256.35(b);

(2) You provide the bond coverage required under subpart I of this part; and

(3) The Regional Director approves the assignment.

* * * * *

(d) You, as assignor, are liable for all obligations that accrue under your lease before the date that the Regional Director approves your request for assignment of the record title in the lease. The Regional Director's approval of the assignment does not relieve you of accrued lease obligations that your assignee, or a subsequent assignee, fails to perform.

(e) Your assignee and each subsequent assignee are liable for all obligations that accrue under the lease after the date that the Regional Director approves the governing assignment. They must:

(1) Comply with all the terms and conditions of the lease and all regulations issued under the Act; and

(2) Remedy all existing environmental problems on the tract, properly abandon all wells, and reclaim the lease site in accordance with part 250, subpart G.

(f) If your assignee, or a subsequent assignee, fails to perform any obligation under the lease or the regulations in this chapter, the Regional Director may require you to bring the lease into compliance to the extent that the obligation accrued before the Regional Director approved the assignment of your interest in the lease.

15. In § 256.64, the section heading is revised, introductory text and paragraph (a) introductory text are added, paragraph (a)(1) is revised, paragraph (a)(2) is redesignated (a)(8), new paragraphs (a)(2) through (a)(7) are added, paragraphs (d) through (h) are redesignated as paragraphs (e) through (i), paragraph (c) and redesignated paragraph (h) are revised, and a new paragraph (d) is added to read as follows:

§ 256.64 How to file transfers.

This section explains how to file instruments with MMS that create and/or transfer interests in OCS oil and gas or sulphur leases.

(a) You must submit to the Regional Director for approval all instruments that create or transfer ownership of a lease interest.

(1) You must submit two copies of the instruments that create or transfer an interest. Each instrument that creates or transfers an interest must describe by officially designated subdivision the interest you propose to create or transfer.

(2) You must submit your proposal to create or transfer an interest, or create or transfer separate operating rights, subleases, and record title interests within 90 days of the last date that a party executes the transfer agreement.

(3) The transferee must meet the citizenship and other qualification criteria specified in § 256.35 of this part. When you submit an instrument to create or transfer an interest as an association, you must include a statement signed by the transferee about the transferee's citizenship and qualifications to own a lease.

(4) Your instrument to create or transfer an interest must contain all of the terms and conditions to which you and the other parties agree.

(5) You do not gain a release of any nonmonetary obligation under your lease or the regulations in this chapter by creating a sublease or transferring operating rights.

(6) You do not gain a release from any accrued obligation under your lease or the regulations in this chapter by

assigning your record title interest in the lease.

(7) You may create or transfer carried working interests, overriding royalty interests, or payments out of production without obtaining the Regional Director's approval. However, you must file instruments creating or transferring carried working interests, overriding royalty interests, or payments out of production with the Regional Director for record purposes.

* * * * *

(c) When you request approval for an assignment that assigns all your record title interest in a lease or that creates a segregated lease, your assignee must furnish a bond in the amount prescribed in §§ 256.52 and 256.53 of this part.

(d) When you request approval for an assignment that assigns less than all the record title of a lease and that does not create a separate lease, the assignee may, with the surety's consent, become a joint principal on the surety instrument that guarantees compliance with all the terms and conditions of the lease.

* * * * *

(h) Your heirs, executors, administrators, successors, and assigns are bound to comply with each obligation under any lease and under the regulations in this chapter.

(1) You are jointly and severally liable for the performance of each nonmonetary obligation under the lease and under the regulations in this chapter with each prior lessee and with each operating rights owner holding an interest at the time the obligation accrued, unless this chapter provides otherwise.

(2) Sublessees and operating rights owners are jointly and severally liable for the performance of each nonmonetary obligation under the lease and under the regulations in this chapter to the extent that:

(i) The obligation relates to the area embraced by the sublease;

(ii) Those owners held their respective interest at the time the obligation accrued; and

(iii) This chapter does not provide otherwise.

* * * * *

PART 281—[AMENDED]

16. The authority citation for part 281 is revised to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

17. Section 281.33 is amended by revising the first sentence of the introductory text of paragraph (b) to read as follows:

§ 281.33 Bonds and bonding requirements.

* * * * *

(b) All bonds to guarantee payment of the deferred portion of the high cash bonus bid furnished by the lessee must be in a form or on a form approved by the Associate Director for Offshore Minerals Management. * * *

* * * * *

PART 282—[AMENDED]

18. The authority citation for part 282 is revised to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

19. Section 282.40 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 282.40 Bonds.

* * * * *

(b) All bonds furnished by a lessee or operator must be in a form approved by the Associate Director for Offshore Minerals Management. * * *

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[FR Doc. 97–13199 Filed 5–21–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–97–029]

RIN 2115–AE46

Special Local Regulation: Harvard-Yale Regatta, Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the permanent regulations for the annual Harvard-Yale Regatta, a rowing competition held on the Thames River in New London, CT. The regulation is necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event, thus providing for the safety of life and property on the affected navigable waters.

DATES: 33 CFR 100.101 is effective on June 1, 1997, from 3:30 p.m. to 8 p.m. If the regatta is canceled due to weather, this section will be in effect on the following day, Monday June 2, 1997.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J.B. Donovan, Office of Search and Rescue, First Coast Guard District, (617) 223–8460.

SUPPLEMENTARY INFORMATION: This notice implements the permanent special local regulation governing the 1997 Harvard-Yale Regatta. A portion of the Thames River in New London, Connecticut, will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area of the river between the Penn Central Draw Bridge and Bartlett's Cove. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts. The full text of this regulation is found in 33 CFR 100.101.

Dated: May 6, 1997.

J.L. Linnon,

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

[FR Doc. 97–13514 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–97–020]

RIN 2115–AE46

Special Local Regulations for Marine Events; Virginia is for Lovers Cup Unlimited Hydroplane Races, Willoughby Bay, Norfolk, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporaty final rule.

SUMMARY: Special local regulations are being adopted for the Virginia is for Lovers Cup Unlimited Hydroplane Races to be held in Willoughby Bay, Norfolk, Virginia. The event will be held from 8 a.m. to 5 p.m. EDT (Eastern Daylight Time) May 24, 1997 to May 26, 1997. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

DATES: This regulation is effective from 8 a.m. to 5 p.m. EDT on May 24, May 25, and May 26, 1997.

FOR FURTHER INFORMATION CONTACT: LTJG R. Christensen, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, Virginia 23703, (757) 483–8521.

SUPPLEMENTARY INFORMATION: 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 from the date of publication. Following normal rulemaking procedures would have been impractical. The request to hold the event was not submitted until February 3, 1997. Publishing a notice of proposed rulemaking and delaying its effective date would be contrary to safety interests, since immediate action is needed to minimize potential danger to the public posed by the large number of racing vessels participating in this event.

Discussion of Regulations

On May 24, May 25, and May 26, 1997, the City of Norfolk will sponsor the Virginia is for Lovers Cup Unlimited Hydroplane Races in Willoughby Bay. The event will consist of Hydroplanes, Hydrolights and Jersey Speed Skiffs racing at high speeds along a 2 mile oval course. These regulations are necessary to control spectator craft and provide for the safety of life and property on navigable waters during the event.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory procedures of DOT is unnecessary. Entry into the regulated area will only be prohibited while the race boats are actually competing. Since vessels will be allowed to transit the event area between heats, the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule 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). 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 small entities.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.b.2.e(34)(h) of Commandant Instruction M16475.1b (as amended, 61 FR 13564; March 27, 1996), this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary Section 100.35T05–020 is added to read as follows:

§ 100.35T05–020 Willoughby Bay, Norfolk, Virginia

(a) *Definitions*—(1) *Regulated area.* The waters of Willoughby Bay from shoreline to shoreline, and the approaches to Willoughby Bay bounded by a line drawn westerly from the northern corner of Willoughby Spit located at latitude 36°58′06″ North, longitude 76°17′58″ West, to Willoughby Bay Channel Light 7 (LLNR 10595) located at latitude 36°58′06″ North, longitude 76°18′18″ West; thence southwesterly to the shoreline at the Norfolk Naval Base located at latitude 36°57′21″ North, longitude 76°18′27″ West. All coordinates reference Datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(b) *Special Local Regulations*—(1) Except for participants in the Virginia is for Lovers Cup Unlimited Hydroplane Races and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) The Patrol Commander will allow vessel traffic to transit the event area between races.

(c) *Effective dates.* This regulation is effective from 8 a.m. to 5 p.m. EDT on May 24, May 25, and May 26, 1997.

Dated: May 8, 1997.

Kent H. Williams,

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

[FR Doc. 97–13512 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–97–026]

RIN–2115–AE47

Drawbridge Operation Regulations: Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of deviation from regulations.

SUMMARY: The Coast Guard is hereby giving notice that the Florida Department of Transportation has been granted permission to temporarily deviate from the regulations governing the Royal Park (SR 704) drawbridge mile 1022.6 at Palm Beach, from April 14, 1997 through June 14, 1997 for the purpose of conducting structural repairs and painting the bridge structure. This deviation authorizes the bridge owner to open only one leaf of the draw when necessary to pass navigation, and requires vessel operators to provide four hours advance notice to the bridgetender prior to obtaining a double leaf opening. This revised opening procedure is intended to expedite bridge repairs and maintenance operations,

without unreasonably impacting navigation.

DATES: This deviation is effective from April 14, 1997 through June 14, 1997.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050. The telephone number is (305) 536–6546. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 7:30 am and 4:00 p.m., Monday through Friday, except Federal holidays. Comments may also be hand-delivered to Room 406 at the above address.

FOR FURTHER INFORMATION CONTACT: Miss Evelyn Smart, Project Manager, Seventh Coast Guard District (oan), (305) 536–6546.

Background and Purpose

The Royal Park (SR 704) Drawbridge over the Atlantic Intracoastal Waterway at Palm Beach has a vertical clearance of 14.6 feet (4.45m) above Mean High Water (MHW) and 17 feet (5.18m) above Mean Low Water (MLW) in the closed position. On 14 March 1997, the Archer-Western Contractors, Ltd, representing the Florida Department of Transportation, requested a deviation from the current operating schedule in 33 CFR 117.261 paragraphs (a) and (v) governing the Royal Park Drawbridge across the Atlantic Intracoastal Waterway. The deviation was requested to facilitate structural repairs and painting operations on the existing deteriorated structure.

The District Commander granted the Florida Department of Transportation, a temporary deviation from the operating requirements listed in 33 CFR 117.261 paragraph (a) and (v) governing the Royal Park Drawbridge over the Atlantic Intracoastal Waterway. This deviation from normal operating regulations is authorized in accordance with the provisions of 33 CFR 117.43 for the purpose of expediting bridge repairs and painting of the bridge structure. Under this deviation, the Royal Park Drawbridge, operated by the Florida Department of Transportation, shall open only one leaf of the draw, on signal, to pass navigation and shall open both leafs of the draw when four hours advance notice is given to the bridgetender. From April 14, 1997 to May 31, 1997, Monday through Friday except Federal holidays, from 8 a.m. to 9:30 a.m. and from 3:30 p.m. to 5:45 p.m., the draw need open only at 8:45 a.m., 4:15 p.m., and 5 p.m. From 9:30 a.m. to 3:30 p.m., the draw need open only on the quarter-hour and three-quarter hour. Public vessels of the United States and tugs with tows are not exempted from this deviation. Vessels in a situation where a delay would endanger life or property shall be passed through the draw as soon as a double leaf opening can be safely accomplished. From June 1, 1997 to June 14, 1997, the draw shall open on signal. This deviation is effective for a period of 60 days beginning on April 14, 1997 and ending on June 14, 1997.

Dated: May 7, 1997.

J.W. Lockwood,

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

[FR Doc. 97–13511 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–97–014]

RIN 2115–AE47

Drawbridge Operation Regulations; Manistee River, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: Commander, Ninth Coast Guard District has authorized a temporary 90-day deviation from the current bridge operating regulations for the Maple Street bridge, mile 1.1, and the U.S. Route 31 bridge, mile 1.4, both over the Manistee River in Manistee, MI. The temporary deviation was issued at the request of the City of Manistee, MI, to test a proposed change to the times that both bridges are required to open on signal. The deviation changes the current hours of 6 a.m. to 10 p.m. to 7 a.m. to 11 p.m.

DATES: The effective date of this temporary deviation is May 31, 1997 and it will expire on August 31, 1997. Comments must be received July 21, 1997.

ADDRESSES: Comments may be mailed or delivered to Commander (obr), Ninth Coast Guard District, 1240 E. Ninth St., Room 2019, Cleveland, OH 44199–2060, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 902–6084.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, at (216) 902–6084.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested persons to submit comments on the operating schedule during the temporary deviation. Persons submitting comments should include their name, address, identify this notice (CGD09–97–014), and the reason(s) for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½″ x 11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons wanting acknowledgement of receipt of comments should enclose a stamped self-addressed post card or envelope. Persons may submit comment by writing to the Commander (obr), Ninth Coast Guard District, listed under **ADDRESSES.**

Background and Purpose

The City of Manistee, MI, on behalf of the marina owners in Manistee, requested the Coast Guard approve a change to the operating regulations pertaining to the Maple Street bridge and U.S. Route 31 bridge over the Manistee River. The City of Manistee owns and operates the Maple Street bridge. The Michigan Department of Transportation (MDOT) owns the U.S. Route 31 bridge and contracts the City of Manistee to operate the bridge. The marine owners and operators on Manistee Lake requested the hours which the bridges are required to open on signal be revised to allow longer evening sailing times for the vessels using the marinas above the bridges.

The Coast Guard has proposed a revision to the operating schedule, published elsewhere in today's **Federal Register.**

Commander, Ninth Coast Guard District, has approved a temporary deviation from the regulations for the bridges to test the proposed schedule before making a permanent change to the regulations. This temporary deviation will allow the revised bridge schedule to be tested for a 90-day period while still soliciting comments from the public on the proposed permanent change. The Coast Guard will evaluate the effectiveness of the revised schedule at the end of the test period to determine whether to permanently change the regulations.

During the deviation period, the bridges will only be required to open on signal between 7 a.m. and 11 p.m. Between 11 p.m. and 7 a.m., the bridges will open if at least a 2-hour advance

notice is provided by vessels intending to transit the draws.

Dated: May 7, 1997.

G.F. Woolever,

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

[FR Doc. 97–13509 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI54

Reservists' Education: Increase in Rates Payable Under the Montgomery GI Bill—Selected Reserve

AGENCIES: Department of Defense; Coast Guard, DOT; and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: By statute, the monthly rates of basic educational assistance payable to reservists under the Montgomery GI Bill—Selected Reserve must be adjusted each fiscal year. In accordance with the statutory formula, the regulations governing rates of basic educational assistance payable under the Montgomery GI Bill—Selected Reserve for fiscal year 1997 (October 1, 1996, through September 30, 1997) are changed to show a 2.7% increase in these rates. Furthermore, the Veterans' Benefits Improvements Act of 1996 provides that the lower rate of educational assistance payable to reservists pursuing cooperative training was abolished effective October 9, 1996. They will be paid at the same rate as those reservists pursuing residence training. The regulations are changed to conform to statutory requirements.

DATES: This final rule is effective May 22, 1997. However, the changes in rates are applied retroactively to conform to statutory requirements. For more information concerning the dates of application, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, (202) 273–7187.

SUPPLEMENTARY INFORMATION: Under the formula mandated by 10 U.S.C. 16131(b) for fiscal year 1997, the rates of basic educational assistance under the Montgomery GI Bill—Selected Reserve payable to students pursuing a program of education full time, three-quarter time, and half time must be increased by 2.7%, which is the percentage by which the total of the monthly Consumer Price Index-W for July 1, 1995, through June 30, 1996, exceeds the total of the monthly Consumer Price Index-W for July 1, 1994, through June 30, 1995.

10 U.S.C. 16131(b) requires that full-time, three-quarter time, and half-time rates be increased as noted above. In addition, 10 U.S.C. 16131(d) requires that monthly rates payable to reservists in apprenticeship or other on-job training must be set at a given percentage of the full-time rate. Hence, there is a 2.7% raise for such training as well.

10 U.S.C. 16131(b) also requires that the Department of Veterans Affairs (VA) pay reservists training less than half time at an appropriately reduced rate. Since payment for less than half-time training became available under the Montgomery GI Bill—Selected Reserve in fiscal year 1990, VA has paid less than half-time students at 25% of the full-time rate. Changes are made consistent with the authority and formula described in this paragraph.

Before the enactment on October 9, 1996, of the Veterans' Benefits Improvements Act of 1996 (Public Law 104–275), the rate of educational assistance payable to a reservist pursuing a cooperative course was set by statute at 80% of the rate payable to a reservist in residence training. This statutory provision was reflected in the regulations. The Veterans' Benefits Improvements Act of 1996 eliminated this different rate of payment so that reservists in cooperative training receive the same monthly rate as reservists in residence training. 38 CFR 21.7636 is changed accordingly.

Nonsubstantive changes also are made for the purpose of clarity.

The changes set forth in this final rule are effective from the date of publication, but the changes in rates are applied retroactively from October 1, 1996, or October 9, 1996, as respectively set out in the regulations, in accordance with the applicable statutory provisions discussed above.

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Defense, the Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals and does not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health programs, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 24, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

Approved: February 24, 1997.

Al H. Bemis,

Deputy Assistant Secretary for Defense for Reserve Affairs (M&P).

Approved: April 24, 1997.

W.C. Donnell, RADM, USCG,

Assistant Commandant for Human Resources, U.S. Coast Guard.

For the reasons set out above, 38 CFR part 21, subpart L, is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart L—Educational Assistance for Members of the Selected Reserve

1. The authority citation for part 21, subpart L, is revised to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), ch. 36, unless otherwise noted.

2. In 21.7636, paragraphs (a)(1), (a)(2) introductory text, (a)(2)(i), and (a)(3) are revised and the authority citation for paragraph (a) is republished to read as follows:

§ 21.7636 Rates of payment.

(a) *Monthly rate of educational assistance.* (1) Except as otherwise provided in this section or in § 21.7639, the monthly rate of educational assistance payable to a reservist is the amount stated in this table:

Period of pursuit of training	Training time			
	Fulltime	¾ time	½ time	¼ time
Oct. 1, 1995–Sept. 30, 1996	$197.90	$148.42	$98.95	$49.47
On or after Oct. 1, 1996	203.24	152.43	101.62	50.81

(2) The monthly rate of basic educational assistance payable to a reservist for pursuit of apprenticeship or other on-job training full time is the rate stated in this table:

(i)

Training period	Monthly rate	
	Oct. 1, 1995–Sept. 30, 1996	On or after Oct. 1, 1996
First six months of pursuit of training	$148.42	$152.43
Second six months of pursuit of training	108.94	111.78
Remaining pursuit of training	69.26	71.13

* * * * *

(3) The monthly rate of educational assistance payable to a reservist for pursuit of a cooperative course is the rate stated in this table:

Period of pursuit of training	Monthly rate
Oct. 1, 1995–Sept. 30, 1996	$158.32
Oct. 1, 1996–Oct. 8, 1996	162.59
On or after Oct. 9, 1996	203.24

Authority: 10 U.S.C. 16131(b), (c); sec. 12009(c), Pub. L. 103–66, 107 Stat. 416)

* * * * *

[FR Doc. 97–13372 Filed 5–21–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX43–1–7333; FRL–5824–6]

Clean Air Act Limited Approval of Volatile Organic Compound (VOC) Control Measures for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is giving limited approval to certain control measures adopted by the State of Texas in its 15 Percent Rate of Progress Plan. The effect of this action is to finalize the proposed limited approval of these measures published on January 29, 1996, in the **Federal Register** (FR) because they strengthen the State Implementation Plan (SIP) by reducing VOC emissions in the four nonattainment areas in Texas. Also, the EPA is finalizing the limited approval of the measures in the contingency plans because these measures, if implemented, will strengthen the SIP.

EFFECTIVE DATE: This final rule is effective on June 23, 1997.

FOR FURTHER INFORMATION CONTACT: Guy Donaldson at (214) 665–7242.

SUPPLEMENTARY INFORMATION:

Background

Section 182(b)(1) of the Clean Air Act (the ACT), as amended in 1990, requires ozone nonattainment areas with classifications of moderate and above to develop plans to reduce area-wide VOC emissions by 15 percent from a 1990 baseline. These plans also had to include contingency measures in the amount of 3 percent to be implemented if the plans failed to achieve the required reductions. In Texas, 15 Percent Rate of Progress Plans were required for the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso and Houston/Galveston areas. Texas made submittals on November 13, 1993; May 9, 1994, August 3, 1994, and November 14, 1994, to meet the Act's requirement.

In these proposed SIP revisions, Texas included changes to 30 Texas Administrative Code, Chapter 115, concerning the control of VOCs. These revisions included controls on several stationary sources and also limits on gasoline volatility in the El Paso area. On January 29, 1996, the EPA published a proposed limited approval of these control measures. These measures result in a strengthening of the SIP because they will result in reductions in air pollution. The EPA is not taking any action on whether the control measures included in these plans comply with the RACT requirements of the Act, section 182(b)(2), or any other underlying Act requirement. In addition, the EPA is giving limited approval of only the Alternate Means of Control (AMOC) portion of the November 9, 1994, submittal as a strengthening of the SIP. The EPA is taking no action on any other portion of the November 9, 1994, submittal. In this action, the EPA is only finalizing the proposed limited approval of the control measures. The EPA is taking no action with regard to the limited approval and limited disapproval of the 15 Percent Plans themselves. Texas submitted revised 15 Percent Plans for the four areas in a letter dated August 9, 1996. The EPA will evaluate these revised plans and take action in a separate **Federal Register** document on the resubmitted 15 Percent Rate of Progress Plans and Contingency Plans.

This final rule addresses the comments received during the public comment period and announces EPA's final action regarding limited approval of the control measures.

Response to Public Comments

In the January 10, 1996, **Federal Register**, the EPA requested public comments on the proposed rules (61 FR 2751–2760). The EPA received five letters commenting on the January 29, 1996, proposal. They can be placed in the following categories: comments on the amount of emission reduction being approved or disapproved in the proposal, comments regarding the timing of the final action, comments on the action on the AMOC and comments on the concept of a limited approval/limited disapproval, comments on the legality of submitting the Texas plan in phases, and comments on whether the propose bakery rules are Reasonably Available Control Technology.

Comments on the Amount of Emission Reductions

Two commentors believed the EPA was proposing approval of the incorrect amount of emission reductions. One commentor believed that not enough emission reductions were being credited to the industrial wastewater rules. Another commentor believed that too much credit was being allowed for

several measures. In this action, the EPA is not finalizing its action on the amount of emission reductions projected in the plan. This action only finalizes the approval of certain of the control measures included in the plan as a strengthening of the SIP. Comments on the amount of reductions in the plan will be addressed in a separate action on the overall 15 Percent plans.

Comments on the Timing of the Final Action

Six commentors asked that the EPA withhold final action on the limited disapproval of the 15 Percent Plans until the revised plans could be submitted. The EPA is not taking action on the proposed limited approval/limited disapproval of the 15 Percent Plans at this time. Texas submitted revisions to its 15 Percent Plans in a letter dated August 9, 1996.

Comments on the Approval of the AMOC provisions

Two commentors supported the approval of the AMOC provisions. One commentor felt that the AMOC provisions should not be approved because they are ''illegal and outside the Clean Air Act.''

The AMOC provisions allow facilities to identify alternate methods of achieving emissions reductions than those called for in the regulations. The provisions require facilities to achieve more reductions when using alternative methods than would be required by traditional compliance with the State rules. By identifying alternative compliance methods, facilities may be able to achieve greater environmental benefit at substantial cost savings. The AMOC provisions require facilities to apply to the State for approval of an AMOC plan. The State must take public comment on the proposed plan and the EPA has final review authority. The goal of the AMOC process is to provide a process that is less time consuming than processing a source specific SIP revision but still allows appropriate public and EPA review. The EPA disagrees that the AMOC provisions do not meet the requirements of the Act. The State rule requires: (1) greater emission reductions for alternate control methods, (2) a public comment period and (3) EPA approval/disapproval.

Comments on the Concept of a Limited Approval/Limited Disapproval

One commentor states that the EPA has taken a distorted interpretation of the Act by giving limited approval to the measures in the plan as strengthening the SIP since the Act contains specific deadlines.

The EPA agrees that the Act does require emission reductions to occur by specific deadlines. In fact, the proposed limited disapproval was based on the failure of Texas to demonstrate that sufficient reductions would occur to meet the 15 percent requirement. The EPA does believe that the measures being giving limited approval will result in substantial emission reductions and are enforceable, thus warranting a limited approval as a strengthening of the SIP. The limited approval makes the rules federally enforceable. It is EPA's position that sections 110(k)(3) and 301(a) of the Act provide the legal authority for the process.

Comments on the Submittal of the Texas Plan in Phases

One commentor believes that the EPA should not have allowed Texas to submit its plan in phases.

The EPA is not addressing the 15 Percent Plans and the related deadlines at this time. The EPA is only approving the control measures as a strengthening of the SIP not as part of the 15 Percent Plans.

Comments on Whether the Bakery Rules are RACT

One commentor stated the bakery rules which call for 30 percent control should not be considered RACT. The EPA is not approving the bakery rules as RACT. We specifically note in the January 29, 1996 proposal that no action is being taken on whether the measures represent RACT. Texas submitted additional information regarding RACT issues for several source categories including bakeries in a January 19, 1996, proposed SIP revision. The EPA is evaluating this information and will be publishing a determination regarding RACT in a future **Federal Register** action.

Final Action

It is EPA's determination that approval of the control measures in these plans will strengthen the SIP. The EPA is giving limited approval to the control measures in the 15 Percent Plans and Contingency Plans under sections 110(k)(3) and 301(a) of the Act. In this action, the EPA is not addressing whether these control measures, being approved as a strengthening of the SIP, meet any other underlying requirements of the Act such as the requirement for VOC RACT under 182(b)(2). The EPA will address these requirements in separate **Federal Register** documents.

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

Administrative Requirements

A. Executive Order (E.O.) 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under sections 110 and 301, and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning sip's on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that

achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C., section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 21, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 29, 1997.

Jerry Clifford,

Acting Regional Administrator.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(104) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(104) Revisions to the Texas State Implementation Plan, submitted to the EPA in letters dated November 13, 1993, May 9, 1994, August 3, 1994, and November 14, 1994. These control measures can be found in the 15 Percent Plans for the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso and Houston/Galveston ozone nonattainment areas. These control measures are being approved for the purpose of strengthening of the SIP.

(i) Incorporation by reference.

(A) Revisions to the General Rules as adopted by the Texas Natural Resource Conservation Commission on November 10, 1993; Section 101.1—New Definitions for Alcohol Substitutes (used in offset lithographic printing), Automotive basecoat/clearcoat system (used in automobile refinishing), Automotive precoat (used in automobile refinishing), Automotive pretreatment (used in automobile refinishing), Automotive sealers (used in automobile refinishing), Automotive specialty coatings (used in automobile refinishing), Automotive three-stage system (used in automobile refinishing), Batch (used in offset lithographic printing), Cleaning solution (used in offset lithographic printing), Fountain Solution (used in offset lithographic printing), Hand-held lawn and garden and utility equipment, Heatset (used in Offset lithographic Printing), HVLP spray guns, Industrial Solid Waste introductory paragraph and (A)–(C), Lithography (used in offset lithographic printing), Marine terminal, Marine vessel, Municipal solid waste facility, Municipal solid waste landfill, Municipal solid waste landfill emissions, Non-heatset (used in offset lithographic printing), Offset lithography, Sludge, Solid waste introductory paragraph and (A)–(C), Synthetic Organic Chemical Manufacturing Industry batch distillation operation, Synthetic Organic Chemical Manufacturing Industry batch process, Synthetic Organic Chemical Manufacturing Industry distillation operation, Synthetic Organic Chemical Manufacturing Industry distillation unit, Synthetic Organic Chemical Manufacturing Industry reactor process, Transport vessel, Utility engines, Vapor recovery system, VOC introductory paragraph and (A)–(D).

(B) Revisions to Regulation V, as adopted by the Commission on November 10, 1993; Section 115.010. new definitions for Alcohol substitutes (used in offset lithographic printing), Automotive basecoat/clearcoat system (used in automobile refinishing), Automotive precoat (used in automobile refinishing), Automotive pretreatment (used in automobile refinishing), Automotive sealers (used in automobile refinishing), Automotive specialty coatings (used in automobile refinishing), Automotive three-stage system (used in automobile refinishing), Batch (used in offset lithographic printing), Cleaning solution (used in offset lithographic printing), Fountain Solution (used in offset lithographic printing), Hand-held lawn and garden and utility equipment, Heatset (used in Offset lithographic Printing), High-volume low-pressure spray guns, Industrial solid waste introductory paragraph and (A)–(C), Leakless Valve, Lithography (used in offset lithographic printing) Marine terminal, Marine vessel, Municipal solid waste facility, Municipal solid waste landfill, Municipal solid waste landfill emissions, Non-heatset (used in offset lithographic printing), Offset lithography, Owner or operator of a motor vehicle dispensing facility (as used in §§ 115.241–115.249 of this title, relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Fuel Dispensing Facilities), Sludge, Solid waste introductory paragraph and (A)–(C), Synthetic Organic Chemical Manufacturing Industry batch distillation operation, Synthetic Organic Chemical Manufacturing Industry batch process, Synthetic Organic Chemical Manufacturing Industry distillation operation, Synthetic Organic Chemical Manufacturing Industry distillation unit, Synthetic Organic Chemical Manufacturing Industry reactor process, Transport vessel, Utility Engines, Vapor recovery system, Volatile Organic Compound introductory and (A)–(D). Revised sections 115.121(a)(1), 115.121(a)(2), 115.121(a)(3), 115.121(a)(4), 115.122(a)(2), 115.122(a)(3), 115.122(a)(3)(A), 115.122(a)(3)(B), 115.123(a), 115.123(a)(1), 115.123(a)(2), 115.126(a)(1), 115.126(a)(1)(C), 115.126(b)(1)(C), 115.127(a)(1), 115.127(a)(2), 115.127(a)(3), 115.127(a)(4), 115.127(a)(5),

115.127(a)(5)(A), 115.127(a)(5)(B), 115.127(a)(5)(C), 115.129(a)(1), 115.129(a)(2), 115.129(a)(3), 115.129(a)(4), 115.152(a)(2), 115.152(a)(2)(A)–115.152(a)(2)(C), 115.152(a)(3), 115.152(b), 115.152(b)(1), 115.152(b)(2), 115.152(b)(3), 115.155 introductory paragraph, 115.155(1), 115.155(4), 115.155(5), 115.155(6), 115.155(7), 115.155(9), 115.156(1), 115.156(3), 115.156(3)(B), 115.156(3)(C), 115.156(3)(D),115.156(3)(D)(i)–115.156(3)(D)(iii), 115.156(3)(E), 115.156(3)(E)(i), 115.156(3)(E)(ii), 115.211(a)(1), 115.211(b), 115.212(a)(1), 115.212(a)(2), 115.212(a)(3), 115.212(a)(4), 115.212(a)(5)(A), 115.212(a)(5)(A)(i), 115.212(a)(5)(A)(ii), 115.212(a)(5)(B), 115.212(a)(6), 115.212(a)(7), previously approved 115.212(a)(4)(A) now redesignated 115.212(a)(8)(A), 115.212(a)(8)(B), 115.212(a)(8)(C), 115.212(a)(9)(A)–115.212(a)(9)(D), 115.212(a)(10)(A), 115.212(a)(10)(B), 115.212(b), 115.212(b)(1), 115.212(b)(2), 115.212(b)(3),115.212(b)(3)(A), 115.212(b)(3)(A)(i), 115.212(b)(3)(A)(ii), 115.212(b)(3)(B), 115.212(b)(4), 115.212(b)(5), 115.212(b)(6), 115.212(c)(1), 115.212(c)(2), 115.212(c)(3), 115.212(c)(3)(A), 115.212(c)(3)(A)(i), 115.212(c)(3)(A)(ii), 115.212(c)(3)(B), 115.212(c)(4), 115.212(c)(5), 115.214(b)(1), 115.215(b)(7), 115.216(a), 115.216(a)(1), 115.216(a)(2)(C), 115.216(a)(3)(A), 115.216(a)(3)(B), 115.216(a)(3)(C), 115.216(a)(4)(A), 115.216(a)(4)(B), 115.216(a)(4)(C), 115.216(a)(5), 115.216(a)(5)(B), 115.216(a)(5)(C), 115.216(b), 115.216(b)(1), 115.216(b)(2)(C), 115.216(b)(5), 115.216(b)(5)(A), 115.216(b)(5)(B), 115.217(a)(1), 115.217(a)(2), 115.217(a)(3)(A), 115.217(a)(10)(A)–115.217(a)(10)(C) (note: 115.217(a)(10)(A)–115.217(a)(10)(C) were moved to 115.217(a)(8)(A)–115.217(a)(8)(C) in the May, 9, 1994 adoption without revisions), 115.217(a)(11)(A), 115.217(a)(11)(B) (note that 115.217(a)(11)(A) and 115.217(a)(11)(B) were moved to 115.217(a)(9)(A) and 115.217(a)(9)(B) in the May 9, 1994 adoption without revisions, 115.217(b)(1), 115.217(b)(2)(A)–115.217(b)(2)(C), 115.217(b)(3), 115.217(b)(4), 115.217(b)(4)(A)–115.217(b)(4)(C), 115.217(b)(5), 115.217(b)(5)(A), 115.217(b)(5)(B), 115.217(c)(1), 115.217(c)(2)(A)–115.217(c)(2)(C), 115.217(c)(3), 115.217(c)(4), 115.217(c)(4)(A)–115.217(c)(4)(C), 115.217(c)(5), 115.217(c)(5)(A), 115.217(c)(5)(B), 115.219(b), 115.222(1), 115.222(5), 115.222(6), 115.222(7), 115.222(8), 115.222(9), 115.222(10), 115.222(11), 115.226 introductory paragraph, 115.226(1), 115.226(2), 115.226(2)(A), 115.226(2)(B), 115.227(1), 115.227(2), 115.227(3), 115.227(3)(A), 115.227(3)(B), 115.229(a), 115.229(b), 115.229(c), 115.229(c)(1), 115.229(c)(2), 115.234 introductory paragraph, 115.234(1), 115.234(2), 115.235(1), 115.235(4), 115.236 introductory paragraph, 115.236(1), 115.237(1), 115.237(2), 115.237(3), 115.239(a), 115.239(b), 115.242(1), 115.242(1)(A), 115.242(1)(B), 115.242(2), 115.242(2)(A)–115.242(2)(F), 115.242(3), 115.242(3)(A), 115.242(3)(B), 115.242(3)(C), 115.242(3)(C)(i)–115.242(3)(C)(iii), 115.242(3)(D)–115.242(3)(K), 115.242(4), 115.242(5), 115.242(6), 115.242(7), 115.242(8), 115.242(9), 115.242(9)(A)–115.242(9)(C), 115.242(10), 115.242(10)(A), 115.242(10)(B), 115.242(11), 115.242(12), 115.242(12)(A)–115.242(12)(C), 115.243 introductory paragraph, 115.243(1), 115.243(2), 115.244 introductory paragraph, 115.244(1), 115.244(2), 115.244(3), 115.244(4), 115.245 introductory paragraph, 115.245(1), 115.245(1)(A), 115.245(1)(A)(i)–115.245(1)(A)(iv), 115.245(1)(B), 115.245(1)(C), 115.245(1)(D), 115.245(2), 115.245(3),115.245(3)(A)–115.245(3)(C), 115.245(4), 115.245(5), 115.245(5)(A), 115.245(5)(B), 115.245(6), 115.246(1), 115.246(2), 115.246(3), 115.246(4), 115.246(5), 115.246(6), 115.246(7), 115.246(7)(A), 115.246(7)(B), 115.247(2), 115.248(1), 115.248(1)(A), 115.248(1)(B), 115.248(3), 115.248(3)(A)–115.248(3)(E), 115.248(4), 115.248(4)(A), 115.248(4)(B), 115.248(4)(B)(i), 115.248(4)(B)(ii), 115.249(1), 115.249(2),115.249(3), 115.249(4), 115.324(a)(8)(A)(iii), 115.334(3)(A)(iii). New sections 115.352, 115.353, 115.354, 115.355, 115.356, 115.357, and 115.359. Revised sections 115.421(a)(8)(B), 115.421(a)(8)(B)(i), 115.421(a)(8)(C), 115.421(a)(8)(C)(i)–115.421(a)(8)(C)(ix), 115.421(a)(8)(D), 115.421(a)(11), 115.422 introductory paragraph, 115.422(1), 115.422(2), 115.426(a)(1)(B), 115.426(a)(2)(A)(iii), 115.426(b)(1)(B), 115.426(b)(2)(A)(iii), 115.427(a)(1)(B), 115.427(a)(2), 115.427(a)(3), 115.427(a)(4), 115.427(a)(4)(A)–115.427(a)(4)(E), 115.427(a)(5), 115.427(a)(6), deletion of 115.427(a)(7), 115.429(a), 115.429(b), 115.429(c). New Subchapter E: Offset Lithography, sections 115.442, 115.443, 115.445, 115.446, 115.449, and new Subchapter F: Miscellaneous Industrial Sources, Degassing or Cleaning of Stationary and Transport Vessels, sections 115.541, 115.542, 115.543, 115.544, 115.545, 115.546, 115.547, 115.549. Revised sections 115.910(b), 115.930, 115.932, 115.940. New Subchapter J: Administrative Provisions, Standard Permits, section 115.950.

(C) Texas Natural Resources Conservation Commission Order No. 93–20 as adopted November 10, 1993.

(D) Revisions to the General Rules as adopted by the Commission on May 4, 1994; 101.1 new definitions for Alcohol (used in offset lithographic printing), Bakery oven, Clear coat (used in wood parts and products coating), Clear sealers (used in wood parts and products coating), Final repair coat (used in wood parts and products coating), Opaque ground coats and enamels (used in wood parts and products coating), Semitransparent spray stains and toners (used in wood parts and products coating), Semitransparent wiping and glazing stains (used in wood parts and products coating), Shellacs (used in wood parts and products coating), Surface coating processes (M) Wood parts and Products Coating, Topcoat (used in wood parts and products coatings), Varnishes (used in wood parts and products coatings, Wash coat (used in wood parts and products coating).

(E) Revisions to Regulation V as adopted by the Commission on May 4, 1994; 115.10 new Definitions for Alcohol (used in offset lithographic printing), Bakery oven, Clear coat (used in wood parts and products coating), Clear sealers (used in wood parts and products coating), Continuous monitoring, Final repair coat (used in wood parts and products coating), Leak-free marine vessel, Marine loading facility, Marine terminal, Opaque ground coats and enamels (used in wood parts and products coating), Semitransparent spray stains and toners (used in wood parts and products coating), Semitransparent wiping and glazing stains (used in wood parts and products coating), Shellacs (used in wood parts and products coating), Surface coating processes (M) Wood parts and Products Coating, Topcoat (used in wood parts and products coatings), Varnishes (used in wood parts and products coatings, Wash coat (used in wood parts and products coating). Revised 115.121(a)(5), 115.122(a)(3), 115.122(a)(3)(A)–115.122(a)(3)(D), 115.122(a)(4), note: previously adopted 115.122(a)(3)(A) and 115.122(a)(3)(B) moved to 115.122(a)(4)(A) and 115.122(a)(4)(B) without revisions), 115.126(a)(4), 115.126(a)(4)(A)–115.126(a)(4)(C), 115.126(a)(5), 115.126(a)(5)(A)–115.126(a)(5)(C), 115.127(a)(3)(B), 115.127(a)(3)(C), 115.127(a)(3)(D), 115.127(a)(6),

115.129(5), 115.129(6), 115.129(7), 125.129(8), 115.132(a)(4), 115.132(a)(4)(A), 115.132(a)(4)(B), 115.139(a)(1), 115.139(a)(2), New Subchapter B: General Volatile Organic Compound Sources, Industrial Wastewater, Sections 115.140, 115.142, 115.143, 115.144, 115.145, 115.146, 115.147, 115.148, 115.149. Revised 115.152(a), 115.152(a)(1), 115.153, 115.155(2), 115.155(3), 115.155(8), 115.156 Introductory paragraph, 115.156(2), 115.156(2)(A)–115.156(G), 115.156(3), 115.156(3)(A), 115.157 Introductory Paragraph, 115.157(1), 115.157(2), 115.159(a), 115.159(b), 115.159(c), 115.211(a)(1)(A), 115.211(a)(1)(B), 115.211(a)(2), 115.211(a)(3), 115.212(a)(5), 115.212(a)(8), 115.212(a)(9), 115.212(a)(10), 115.212(a)(10)(A)–115.212(a)(10)(C), 115.212(a)(11), 115.212(a)(11)(A), 115.212(a)(11)(B), 115.212(a)(12), 115.212(c), 115.213(c), 115.214(a)(1), 115.214(a)(2), 115.214(a)(3), 115.214(a)(4), 115.214(a)(5), 115.214(a)(5)(A)–115.214(a)(5)(E), 115.214(a)(6), 115.215(a), 115.215(a)(7), 115.215(a)(8), 115.215(a)(9), 115.215(a)(10), 115.216(a)(4), 115.216(a)(5)(A), 115.216(a)(6), 115.216(a)(6)(A), 115.216(a)(6)(A)(i)–115.216(a)(6)(A)(iii), 115.216(a)(6)(B), 115.216(a)(6)(C), 115.216(a)(6)(D), 115.216(a)(7), 115.216(a)(8) 115.217(a)(3), 115.217(a)(3)(B), 115.217(a)(3)(C), 115.217(a)(4), 115.217(a)(5), 115.217(a)(6), 115.217(a)(6)(A), 115.217(a)(6)(B), 115.217(a)(7), 115.217(a)(8), 115.217(a)(8)(D), 115.217(a)(9), 115.217(a)(9)(C), 115.217(a)(10), 115.217(a)(10)(A)–115.217(a)(10)(E), 115.217(a)(11), 115.217(a)(11)(A)–115.217(a)(11)(C), 115.217(b)(2), 115.217(c)(2), 115.219(a)(1), 115.219(a)(2), 115.219(a)(3), 115.219(a)(4), 115.219(a)(5), 115.219(a)(6), new Sections 115.252, 115.253, 115.255, 115.256, 115.257, 115.259, revised 115.352 introductory paragraph, 115.353, 115.354 introductory paragraph, 115.355 introductory paragraph, 115.356 introductory paragraph, 115.357 introductory paragraph, 115.357(2), 115.357(9), 115.359, 115.415(a)(1)(A), 115.415(b)(1)(A), 115.416(a), 115.421(a), 115.421(a)(13), 115.421(a)(13)(A), 115.421(a)(13)(A)(I)–115.421(a)(13)(A)(vii), 115.421(a)(13)(A)(viii), 115.421(a)(13)(A)(viii)(I), 115.421(a)(13)(A)(viii)(II), 115.421(a)(13)(A)(ix), 115.421(a)(13)(A)(x), 115.421(a)(13)(B), 115.421(a)(13)(C), 115.421(a)(13)(C)(I), 115.421(a)(13)(C)(ii), 115.422(1)(A)–115.422(1)(C), 115.422(3), 115.422(3)(A), 115.422(3)(B), 115.429(d), 115.432(a), 115.432(a)(2), 115.432(a)(2)(A), 115.432(a)(2)(B), 115.442 introductory paragraph, 115.443, 115.445 introductory paragraph, 115.446 introductory paragraph, 115.446(5), 115.449(a), 115.449(b), 115.449(c), 115.532(a)(5), 115.532(a)(5)(A), 115.532(a)(5)(B), 115.541(a), 115.541(b), 115.541(b)(1), 115.541(b)(2), 115.541(b)(3), 115.541(b)(4), 115.541(b)(5), 115.542(a), 115.543, 115.544 introductory paragraph, 115.545 introductory paragraph, 115.546 introductory paragraph, 115.547 introductory paragraph, 115.549(a), 115.549(b), 115.549(c), new sections 115.552, 115.553, 115.555, 115.556, 115.557, 115.559, repeal of sections 115.612, 115.613, 115.614, 115.615, 115.617, 115.619, new sections 115.600, 115.610, 115.612, 115.613, 115.614, 115.615, 115.616, 115.617, and 115.619.

(F) Texas Natural Resource Conservation Commission Order No. 94–06 as adopted May 4, 1994.

(G) Revision to Regulation V as adopted by the Commission on July 13, 1994; new sections 115.901, 115.910, 115.911, 115.912, 115.913, 115.914, 115.915, 115.916, 115.920, 115.923.

(H) Texas Natural Resource Conservation Commission Order No. 94–26 as adopted July 13, 1994.

(I) Texas Natural Resource Conservation Commission Order No. 94–0676-SIP as adopted November 9, 1994.

(ii) Additional material.

(A) Appendix A of the Revision to the Texas SIP adopted by the Commission on November 9, 1994 concerning alternate means of control.

[FR Doc. 97–13487 Filed 5–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5828–6]

Approval and Promulgation of Air Quality Implementation Plans; Revised Format of 40 CFR Part 52 for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of administrative change.

SUMMARY: EPA is revising the format of 40 CFR part 52 for materials submitted by states that are incorporated by reference into their respective state implementation plans (SIPs). This format revision will primarily affect the ''Identification of plan'' sections assigned to each subpart (i.e., state or territory) of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the **Federal Register**, the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, D.C., and the originating Regional Offices. The revised format will; better serve to help the public in determining the applicable state provisions, rules and regulations that comprise the respective Federally-enforceable SIP's; streamline the format of the documents that will be available for public inspection at the above-mentioned locations; streamline the IBR review process followed by the Office of the **Federal Register** in reviewing state material for incorporation by reference into 40 CFR part 52; and assure continued compliance with the provisions of the Clean Air Act, which requires EPA to periodically publish comprehensive SIP documents for each state. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or state-submitted materials not subject to IBR review remain unchanged.

EFFECTIVE DATE: This action is effective May 22, 1997.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at (1) the Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M Street, SW., Room M1500, Washington, DC 20460; and (2) the Office of the **Federal Register**, 800 North Capitol Street, NW., Suite 700, Washington, DC.

In addition, all SIP materials listed in the ''Identification of plan'' sections of each 40 CFR part 52 subpart are available at the appropriate EPA Regional Office as listed below:

(i) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Environmental Protection Agency, Region 1, One Congress Street, Boston, MA 02203.

(ii) New York, New Jersey, Puerto Rico, and Virgin Islands. Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007–1866.

(iii) Delaware, District of Columbia, Pennsylvania, Maryland, Virginia, and West Virginia. Environmental Protection Agency, Region 3, 841 Chestnut Building, Philadelphia, PA 19107.

(iv) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. Environmental Protection

Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303.

(v) Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3507.

(vi) Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Environmental Protection Agency, Region 6, Fountain Place, 1445 Ross Avenue, Suite 700, Dallas TX 75202–2733.

(vii) Iowa, Kansas, Missouri, and Nebraska. Environmental Protection Agency, Region 7, 726 Minnesota Avenue, Kansas City, KS 66101.

(viii) Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466.

(ix) Arizona, California, Hawaii, Nevada, American Samoa, and Guam. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

(x) Alaska, Idaho, Oregon, and Washington. Environmental Protection Agency, Region 10, 1200 6th Avenue Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Ms. Montel Livingston, Chair, Agency SIP Workgroup Steering Committee at (206) 553–0180, or Mr. Harold A. Frankford, Leader, IBR Reform Team at (215) 566–2108.

SUPPLEMENTARY INFORMATION:

Background

Each state is required to have a SIP which contains the control measures and strategies which will be used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms. The control measures and strategies must be formally adopted by each state after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures are approved by EPA after notice and comment, they are incorporated into the SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), Title 40 of the Code of Federal Regulations (40 CFR part 52). The actual state regulations which are approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are ''incorporated by reference,'' which means that the citation of a given state regulation with a specific effective date has been approved by EPA. This format allows both EPA and the public to know which measures are contained in a given SIP and insure that the state is enforcing the regulations. It also allows EPA and the public to take enforcement action, should a state not enforce its SIP-approved regulations.

The SIP is a living document which can be revised by the state as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions which may contain new and/or revised regulations as being part of the SIP. On May 31, 1972 (37 FR 10842), EPA approved, with certain exceptions, the initial SIPs for 50 states, four territories and the District of Columbia.

(**Note:** EPA approved an additional SIP—for the Northern Mariana Islands—on November 10, 1986 (51 FR 40799)).

Since 1972, each state and territory has submitted numerous SIP revisions, either on their own initiative, or because they were required to as a result of various amendments to the Clean Air Act (CAA).

Within 40 CFR part 52, there are 58 subparts (subparts A through FFF). Subpart A contains general requirements applicable to all states and territories, while subparts B through DDD and FFF contain requirements that are specific to a given state or territory. Subpart EEE contains historical information pertaining to EPA action on SIP material originally submitted by states to the National Air Pollution Control Administration, Department of Health Education and Welfare in 1970.

The first or second section of each state-submitted subpart within 40 CFR part 52 (other than subparts A and EEE) is called ''Identification of plan.'' This section summarizes state-developed requirements which EPA has approved as part of a given SIP since May 31, 1972. The state material became federally-enforceable at the time of EPA approval through a procedure known as incorporation by reference (IBR) under procedures prescribed in 1 CFR part 51. Originally, this ''Identification of plan'' section contained descriptions of both regulatory and non-regulatory state requirements that were applicable to a state SIP. However, state submittals that were approved by EPA on or after July 1, 1982 were required to undergo a different type of IBR review before they could be listed in the ''Identification of plan'' section. Under these procedures, EPA was required to provide the Office of the **Federal Register** (OFR) the following documentation associated with each SIP revision:

(1) A crossout/underlined version of the state document showing all of the revisions being acted upon by EPA. All material that was extraneous to the IBR documents was to be crossed out.

(2) The specific cross-reference in the respective Identification of plan sections of all state citations or the individual source of the documents being IBR'ed.

During a given year, EPA usually requests the OFR to perform between 150 and 200 IBR reviews per year. While the use of the IBR review process and the detailed citation descriptions found in 40 CFR part 52 has helped interested parties keep track of the revised SIP provisions for each subpart, both the EPA and the OFR have found the IBR process for SIP revisions (as it currently exists) to be inefficient and time consuming, given the frequency of the part 52 revisions subject to IBR. The necessary OFR review often has resulted in a delay of three weeks or more before the final EPA action was published in the **Federal Register**. In addition, the amount of IBR material that EPA has been required to submit to the OFR and maintain at the Air and Radiation Docket and Information Center at Waterside Mall is voluminous in comparison to its overall utility. While the interested public has access to all material that is IBR'ed in 40 CFR part 52, the available material, in many cases, consists of a piecemeal series of plan *revisions* (emphasis added) rather than integrated amendments. Thus, EPA has found that it is no longer conducive for providing the public with a sense of what comprises the comprehensive SIP for each state, district and territory whose Federally-enforceable regulations are listed in 40 CFR part 52. Furthermore, the current format of the ''Identification of plan'' sections in 40 CFR part 52 is inconsistent with the intent of section 110(h)(1) of the CAA which requires EPA to ''assemble and publish a comprehensive document for each state setting forth the requirements of the applicable implementation plan of such State'' at periodic intervals. The initial comprehensive compilation was due November 15, 1995, with updates required every three years thereafter.

Revised Part 52 Format/IBR Document

As a result of consultations between EPA and OFR, EPA has begun the process of developing (1) a revised SIP document for each state that would be incorporated by reference under the provisions of 1 CFR part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR

document and the CFR, and (3) a revised format of the ''Identification of plan'' sections for each applicable subpart to reflect these revised approval and IBR procedures. The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are listed below in more detail.

Content of Revised IBR Document

The new SIP compilations will contain the Federally-approved portion of regulations submitted by the various state agencies. The compilations will be stored in 3-ring binders and updated primarily on an annual basis. If no significant changes are made for any state to the SIP during the year, an update will not be made during that year. On the other hand, if significant changes occur during the year an update could be done on a more frequent basis, as applicable. Typically, only the revised section of the compilation will be updated. Complete resubmittals of a state SIP compilation will be done on an as-needed basis.

Each compilation will contain a table of contents identifying each section of the regulations, including an adoption or effective date for the regulations. The table of contents in the compilation will correspond to the table of contents published in 40 CFR part 52 for that particular state. A copy of the full text of each state's current compilation will be maintained at the Office of Federal Register and EPA's Air Docket and Information Center. Each EPA Regional Office will maintain a compilation for the states within its jurisdiction. The EPA Regional Offices will have the primary responsibility for ensuring accuracy and updating the compilations.

EPA will publish an informational document in the rules section of the **Federal Register** when updates are made to the SIP compilations. These updates will generally be done on an annual basis, or more frequently if needed. This notice will identify the specific sections of the compilations being updated. It is envisioned that updates may be for only one section, or for up to the whole compilation, depending on the extent of revisions done during that year.

EPA will now begin phasing in SIP compilations for individual states, and expects to complete the conversion of the revised ''Identification of plan'' format and IBR documentation for all states by May 24, 1999. This revised format is consistent with the SIP compilation requirements of section 110(h)(1) of the CAA; however, EPA regards this part 52 reorganization as a separate streamlining effort with no formal legal connection to the CAA section 110(h)(1) requirements.

Revised Format of the ''Identification of Plan'' Sections in Each Subpart

In order to better serve the public, EPA is revising the organization of the ''Identification of plan'' section and including additional information which will make it clearer as to what provisions constitute the enforceable elements of the SIP.

The revised Identification of Plan section will contain five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA approved source specific permits, and (e) EPA approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

(a) *Purpose and scope:* Identifies the authority under which EPA is approving the SIP revisions.

(b) *Incorporation by reference:* Lets the public know that the OFR granted EPA approval to incorporate materials by reference which were submitted by the states to fulfill CAA requirements, after notice and comment. It also certifies that materials incorporated by reference are exact duplicates of the state regulations as submitted by EPA to the OFR.

(c) *EPA approved regulations:* This is a table that lists all of the state regulations which have been submitted for inclusion in the SIP by the state for the purpose of attaining and maintaining the NAAQS, and which have been approved by EPA for those purposes. These regulations have gone through state rulemaking process and the public was given an opportunity to participate in the rulemaking. A comment field is provided in the tables to describe any Agency limitations or qualifications on EPA's approval action. Several of EPA's Regional Offices have included similar tables as separate sections in part 52 in the past, see §§ 52.1031, 52.1605, and 52.1679. This format provides a single location where interested parties can locate the applicable state approved regulations which are included in the SIP. In the past, interested parties would have to search the ''Identification of Plan'' section to determine which state regulations were currently approved as part of the SIP. As EPA receives and acts on new SIP revisions which affect the entries in the tables, upon final approval the entry would be updated to reflect the latest state effective date and EPA's latest approval date along with the FR citation. The full text of approved regulations will not be included in the CFR but will become part of those IBR documents described previously at the time of the next annual update.

(d) *EPA approved source specific permits:* This table lists all the source specific permits which have been submitted for inclusion in the SIP by the state. These permits have gone through state rulemaking process and the public was given an opportunity to participate in the rulemaking. EPA also took rulemaking action on these permits and those which have been approved or conditionally approved by EPA are listed along with any limitations on their approval, if any. This provides a single location where interested parties can locate the applicable source specific state and EPA approved permits which are included in the SIP. Should a permit be revised or a new permit submitted, after EPA rulemaking on such revision the table entry would be revised to reflect the new information.

(e) *EPA-approved nonregulatory control measures:* This table lists all of the nonregulatory control measures which have been submitted for inclusion in the SIP by the state. These control measures have gone through state rulemaking process and the public was given an opportunity to participate in the rulemaking. EPA also took rulemaking action on these control measures and those which have been EPA-approved or conditionally approved are listed along with any limitations on their approval, if any. This provides a single location where interested parties can locate the applicable nonregulatory control measures which are included in the SIP.

Note: Because the documents and materials listed in subsection (e) are nonregulatory, they will not undergo the IBR process under 1 CFR part 51. Therefore, these documents will be available for public inspection only at the Regional Offices listed in the **ADDRESSES** section above.

An example of the revised ''Identification of plan'' format appears below:

Subpart XX—State Name

§ 52.xxxx Identification of plan.

(a) Purpose and scope.

This section sets forth the applicable state implementation plan for [insert state name] under section 110 of the CAA, 42 U.S.C. 7401–7671q and 40 CFR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference.

(1) Material listed as incorporated by reference in section 52.xxxx (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C.

552(a) and 1 CFR part 51. Material incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**.

(2) EPA Region ____ certifies that as of July 1, 1997 the rules/regulations provided by EPA at the addresses below are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the state implementation plan.

(3) Copies of the materials incorporated by reference may be inspected at the Office of Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of the materials incorporated by reference may also be inspected at the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC. 20460 and the appropriate Environmental Protection Agency Regional Office listed in the **ADDRESSES** section of this document.

(c) EPA approved regulations.

[Insert table of approved regulations, see example below.]

EPA APPROVED [insert state name] REGULATIONS.

State citation	Title/subject	State effective date	EPA approval date	Comments
	The name of the state regulations which are approved are listed in This column.	A unique date that the state uses to identify different versions of their regulations.	The date EPA publishes its approval and the FR citation.	

(d) EPA-approved State Source specific permits.

[Insert table of approved source specific permits, see example below.]

EPA-APPROVED [Insert state name] SOURCE-SPECIFIC PERMITS.

Name of source	Permit number	State effective date	EPA approval date	Comments
Name of source requesting and receiving specific limitations.	Unique state identifying number.	The date state approved the permit.	The date EPA publishes its approval and the FR citation.	

(e) EPA approved nonregulatory provisions and quasi-regulatory measures. Examples of nonregulatory SIP provisions include, but are not limited to, the following subject matter:

SIP Narratives
PM10 Plans
CO Plans
Ozone Plans
Maintenance plans
I/M SIP's
Emissions Inventories
Monitoring Networks
State Statutes
Part D plans
Attainment demonstrations
Transportation control measures (TCM's)
Committal measures
Contingency Measures
Nonregulatory & Non-TCM Control Measures
15% Rate of Progress Plans
Emergency episode plans
Visibility plans

[Insert table of approved nonregulatory measures, etc., see example below.]

EPA-APPROVED [insert state name] NONREGULATORY PROVISIONS.

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Comments
Name of control measures	The geographic and/or nonattainment area were the control measure applicable.	The date state approved the control measure.	The date EPA publishes its approval and the CFR citation.	

Revised Mechanism for EPA Approval

Under the current EPA approval/IBR procedures, EPA utilizes the following procedure to revise 40 CFR part 52:

EPA revises subsection (c) of the appropriate Identification of plan section found in each subpart by adding or amending a numbered paragraph. Each paragraph contains two major subparagraphs: An ''Incorporation by reference'' portion which describes the submittal date, state agency/official, effective date of the rule in the pertinent state, and a description of the rule (either section citation or source name), and an ''Additional materials'' portion, which references the remaining pertinent material (e.g., public hearing information, control strategy demonstration, etc.) of that particular state submittal. A copy of the official state document which reflects the ''Incorporation by reference'' materials is sent to the OFR for review. Each revision must undergo a thorough IBR review by the OFR.

Under the revised mechanism, EPA will indicate approval action of a state submittal by amending the appropriate charts (see above) describing the title of the regulation at the time of final EPA approval of the submittal as published in the **Federal Register**. At the outset under the revised mechanism, EPA will provide the full text of the comprehensive SIP compilation described above for each state and territory to the Office of Federal Register, along with a master table of contents, which will constitute the base IBR document. Supplements to this comprehensive IBR document will be submitted to the OFR for IBR review approximately once per year, reflecting the changes made over the course of the year to the individual tables, including the full text of the currently approved SIP through the separate EPA rulemaking actions. If no significant changes are made during the year, no updates will be submitted to the OFR for IBR review.

Enforceability and Legal Effect

This change to the procedures for incorporation by reference announced today will not alter in any way the enforceability or legal effect of approved SIP materials, including both those approved in the past or to be approved in the future. All material identified in the Code of Federal Regulations (CFR) and approved by EPA into a SIP after

notice-and-comment rulemaking is federally enforceable, both by EPA under CAA section 113 and by citizens under CAA section 304, where applicable. This includes all materials listed for incorporation by reference in the new section (c) (all federally-approved state regulations) and new section (d) (all source-specific SIP revisions), as well as those identified in new section (e) (all non-regulatory SIP provisions and quasi-regulatory measures). With respect to the documents listed in section (e), since no regulatory material is associated with these revisions these provisions are fully enforceable upon EPA approval into the SIP, without any incorporation by reference. To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA will be retaining the current Identification of Plan section, previously appearing in the CFR as the first or second section of part 52 for each state, in an appendix to each state CFR section for a period of at least two years. This appendix will include the Identification of Plan section as it appeared in part 52 prior to adoption of the new system; it will not add any newly submitted SIP revisions to the appendix. After the initial two year period, EPA will review its experience with the new system and enforceability of previously approved SIP measures, and will decide whether or not to retain the Identification of Plan appendices for some further period.

All SIP revisions approved in the future under the revised ''Identification of plan'' format and IBR procedure will be federally enforceable as of the effective date of the final rulemaking in which EPA approves the SIP revision. Specifically, as of the effective date of the final rule, all provisions identified in the **Federal Register** notice announcing the SIP approval will be fully enforceable under sections 110 and 113 of the CAA, although they may not yet appear in 40 CFR part 52. Such provisions will be included in the next annual update of the CFR described above. Thus, it is not necessary that regulatory language associated with a SIP requirement have been actually incorporated by reference into the CFR to render a SIP requirement enforceable from the time of EPA approval.

In conclusion, EPA believes that the revised SIP document/IBR procedures/ 40 CFR part 52 format described above represents an improvement that benefits both the Government (by streamlining the current procedures and reducing the size of the documents that must be kept on file) and the interested public (by providing a clearer description as to what constitutes the applicable SIP for each state at any given moment in time). As explained above, the revised procedures do not affect federal enforceability of the SIP, while at the same time, is consistent with the requirements of section 110(h)(1) of the CAA concerning comprehensive SIP publication. In addition, these revised procedures are consistent with the goals of the Agency's national performance review (NPR) designed to streamline EPA's regulatory requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 14, 1997.

Carol M. Browner,

Administrator

[FR Doc. 97–13484 Filed 5–21–97; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–21

RIN 3090–AG35

Pricing Practices for Reimbursable Work Authorizations

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule modifies the Public Buildings Service's (PBS's) pricing practices for Reimbursable Work Authorizations (RWAs). Currently, our customer agencies are billed the actual costs for supplies, materials, labor, contract costs and overhead related to the RWA. This interim rule establishes a fixed price policy for one-time RWA's, such as painting, cleaning and alterations. A fixed price RWA is one in which the authorized amount is the billed amount including all project changes. The fixed price will change only if the work request is modified or unforeseen site conditions arise. Customers will not have to pay for delays caused by GSA. Fixed price reimbursables will help PBS: Act as a provider of choice with the new delegation of alterations authority to agencies for alterations up to $100,000; implement predominant commercial sector pricing practices; and enhance the satisfaction and quality of service to our customers by making the work faster through streamlined processes.

DATES: Effective date: May 22, 1997.

Comment date: July 21, 1997.

ADDRESSES: Comments should be submitted to the General Services Administration, Public Buildings Service, Office of Property Management, (PM), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeffrey Neely, Acting Deputy Assistant Commissioner, Office of Property Management at (202) 501–0971.

SUPPLEMENTARY INFORMATION: In the past, PBS was a mandatory source on all reimbursable work done in PBS controlled buildings. However, PBS is now entering a new era. The National Performance Review and the ''Can't Beat GSA Alterations Program'' envision a more competitive PBS. Fixed pricing facilitates this objective. The fixed price method of charging RWAs to our customers will make their budgeting for reimbursable work an easier and more accurate process, as well as enhance their ability to make informed choices about RWA services. Billing problems should be reduced or eliminated. Total costs and a payment schedule will be determined clearly at the outset. It should also serve as incentive to PBS to ensure that the job is done efficiently and to the customer's satisfaction.

The General Services Administration has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This interim rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply. The Paperwork Reduction Act does not apply to this action because the proposed changes to the Federal Property Management Regulations do not impose reporting, recordkeeping or information collection requirements which require the approval of the Office of Management and Budget pursuant to 44 U.S.C. 3501, *et seq.* This rule also is exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 101–21

Federal buildings and services, Government property management, Space and services.

Dated: March 26, 1997.

David J. Barram,

Acting Administrator of General Services.

PART 101–21—[AMENDED]

Therefore 41, CFR part 101–21 is amended as set forth below:

1. The authority citation for 41 CFR part 101–21 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c).

Subpart 101–21.6—Billings, Payments, and Related Budgeting Information for Space and Services Furnished by the General Services Administration

2. Section 101–21.604 is amended by revising paragraphs (d) through (h) and by adding paragraph (i) to read as follows:

§ 101–21.604 Billing procedures for reimbursable charges.

* * * * *

(d) The following basic types of reimbursable work are performed by GSA on a fixed price basis. The fixed price is the amount of the Reimbursable Work Authorization (RWA) which is the authorized amount:

(1) Non-recurring services performed above standard levels of service, such as out-of-cycle painting;

(2) Recurring services not included in the standard level for which a price can be established;

(3) Repairs and alterations in buildings not controlled by GSA;

(4) Special space alterations and adjustments performed by GSA in GSA-operated buildings, which are requested and financed by other agencies in accordance with § 101–20.106, Reimbursable services, of this chapter; and

(5) Alteration projects up to the prospectus threshold.

(e) Where the amount of the RWA is less than $25,000, billing will occur at termination date. Other bills will be rendered at the customer's option, based on delivered orders either monthly or quarterly.

(f) RWAs above the prospectus threshold shall be performed on an actual cost basis. In special circumstances, when GSA and the ordering agency agree, non-prospectus alterations work may be performed on an actual cost basis. GSA will make every effort to obtain approval and certification of additional funds before incurring any obligations in excess of 10 percent of the authorized amount or $500, whichever is greater. However, failure of GSA to notify the agency that obligations will exceed the authorized amount, regardless of dollar amount, does not relieve the agency of paying in full the actual costs.

(g) A Reimbursable Work Authorization request (Form 2957 or other acceptable request) must be completed and approved by GSA and an agency official certifying that he/she has the authority to order the services and commit the agency to payment.

(h) Bills for recurring above-standard level services are rendered in advance at an established cost equal to the estimated amount. This type of work authorization, with the right to cancel (subject to incurred costs and obligations) upon 60 days notice by either party must be completed and forwarded to GSA prior to the commencement of the period for which services are required. With the exception of recurring work authorizations for utilities, which GSA may limit to 3-month periods, each recurring type work authorization must authorize charges for the full period during the fiscal year that the services will be required. These work authorizations must always begin and end within the same fiscal year.

(i) Agencies shall be responsible for timely payment and resolving any billing problems regarding orders they place under GSA contracts.

[FR Doc. 97–13489 Filed 5–21–97; 8:45 am]

BILLING CODE 6820–BR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC74

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Helianthus eggertii (Eggert's Sunflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines threatened status for *Helianthus eggertii* (Eggert's sunflower) under the authority of the Endangered Species Act of 1973, as amended (Act). This rare plant is presently known from an estimated 34 populations in 14 counties—in Alabama, one population in Blount County; in Kentucky, one population from Grayson and Hardin counties, two populations from Edmonson and Barren counties, and seven populations from Hart County; in Tennessee, one population each in Dickson, Marion, and Williamson counties, two (and a portion of a third) in Maury County, three in Lewis County, four in Lawrence County, and six in Coffee County. It is threatened throughout its range by habitat alteration; residential, commercial, or industrial development; plant succession; and conversion of its limited habitat to pasture or croplands. Herbicide use, particularly along roadsides, also poses a threat. This action extends Federal protection under the Act to Eggert's sunflower.

EFFECTIVE DATE: June 23, 1997.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff at the above address (704/258–3939, Ext. 229).

SUPPLEMENTARY INFORMATION:

Background

Helianthus eggertii (Small) (Eggert's sunflower) is a perennial member of the aster family (Asteraceae) known only from Kentucky, Tennessee, and Alabama. It is a tall (to 2.5 meters [8 feet]) plant arising from a short, thick base, perennating by shallow elongate, fleshy rhizomes that can form an extensive network. The plant is smooth, except for some slight roughening on the upper leaf surfaces, and it has a blue-waxy coloration. The lower leaves are conspicuously whitened. The plant's opposite (rarely whorled) leaves are mostly lanceolate to narrowly ovate, the largest being 10 to 20 centimeters (3.9 to 5.7 inches) in length. Leaf edges are smooth or minutely toothed, and the tip is usually pointed. Large yellow flowers (8 centimeters [3 inches]) are borne on the upper third of the stem. Cypsalas (seeds) are blackish or grayish and mottled, 5 to 6 millimeters (0.25 inches) long, faintly striated, and with a few scattered trichomes (hairs). Flowering begins in early August and continues through mid-September, and achenes mature from early September to early October (Jones 1991). Jones (1991) observed fruit set at between 5 and 25 seeds per flower head. Seed germination rates are generally low (rarely exceeding 25 percent) and most require exposure to cold to break dormancy (Heiser *et al.* 1969).

Eggert's sunflower develops an extensive rhizome system, and these rhizomes can live for many years. Thus, the plant does not have to produce seeds every year to ensure its survival. If environmental conditions change

(e.g., increased competition, shading, etc.); it can survive for several years by vegetative means, as Jones (1991) noted was the case in several populations.

Small (1903) designated the type locality of Eggert's sunflower as near White Bluff in Dickson County, Tennessee, from specimens collected by H. Eggert. Beatley (1963) considered this plant a distinct species and that it was ''conspicuous because of the colonial habit and glaucescense.'' In a comprehensive essay on *Helianthus*, Heiser *et al.* (1969) retained *H. eggertii* as a distinct species and placed it in the series *Divaricati*, being distinguished by its nearly sessile, glaucous, and glabrous leaves. This work pointed out that *H. eggertii* is a hexaploid (n=51) and could have arisen from a cross between *H. laevigatus* (n=34), a shale barren species of the Allegheny Mountains, and *H. decapetalus* (n=17), a widespread species of the eastern United States.

Spring and Schilling (1991) found *H. eggertii* to have a unique chemical profile. Of the related sunflowers, it is most similar to *H. laevigatus*, which shares 9 of 12 chemical compounds. Smith (1957) considered *H. eggertii* to be a local minor variant of *H. strumosus*, but this species is dissimilar biochemically although the two species appear to readily hybridize.

Helianthus eggertii typically occurs on rolling to flat uplands and in full sun or partial shade. It is often found in open fields or in thickets along woodland borders and with other tall herbs and small trees. The distribution of this species shows a strong correlation with the barrens (and similar habitats) of the Interior Low Plateau Physiographic Province, with a few records from the Cumberland Plateau Section of the Appalachian Plateau Physiographic Province. The following is a description of the species' status within each State where it occurs. The term ''population'' is used loosely in these descriptions because it is not known how distant individual plants must be from one another to prevent cross-pollination. Populations described below are groups of ''occurrences'' in general proximity to each other and may or may not correspond to true biological populations.

Alabama

The only known location for Eggert's sunflower in Alabama (Blount County) was discovered in 1981 by Robert Kral (Jones 1991). This site, although presently vigorous, could be affected by local development and Interstate 65 maintenance and improvements.

Tennessee

The following information on Eggert's sunflower in Tennessee is primarily from Jones (1991) and the Tennessee Natural Heritage Program database.

Prior to the status survey conducted by Jones (1991), there were 12 counties in Tennessee with records (a total of 13) of *H. eggertii.* Four sites were found to have been extirpated (one each in Coffee, Davidson, Lawrence, and Williamson counties) and four were found to be erroneous records (one each in Dekalb, Grundy, Clay, and Morgan counties). Additional occurrences were discovered during the status survey and later by the Tennessee Department of Environment and Conservation (TDEC) (1993, *in litt.*) and the U.S. Air Force, Arnold Engineering Development Center (AEDC). Several sites in Coffee, Franklin, Lawrence, and Lewis counties are probably single populations and are treated as such in this document, including the occurrences on AEDC in Coffee and Franklin counties. The 20 known populations in Tennessee are distributed as follows: Coffee County—six populations; Lawrence County—four populations; Franklin County—two populations plus a portion of the occurrences on AEDC; Lewis County—three populations; Maury County—two populations; and one population each in Dickson, Marion, and Williamson counties. Most of these populations (about 50 percent) are small, having fewer than 20 individual plants. The other populations contain several hundred stems. Most of the Tennessee populations are threatened either by roadside maintenance, weedy invaders, fire suppression, or development. The largest known population is found on Federal lands (AEDC), three occur entirely or partially on State lands, and the remainder are found in roadside rights-of-way or on private lands.

Kentucky

The following information on Eggert's sunflower in Kentucky is primarily derived from Jones (1991) and the Kentucky State Nature Preserves Commission (KSNPC) (1996, *in litt.*).

Populations of Eggert's sunflower in Kentucky are known from the Mammoth Cave Plateau subsection and Eastern Highlands Rim subsection of the Interior Low Plateau Physiographic Provinces. Prior to the status survey conducted by Jones (1991), there were three counties in Kentucky with single records of occurrence for *H. eggertii.* One site, in Edmonson County, has been extirpated, and the other two records have proven to be erroneous (one each in Lincoln and Jackson counties). However, seven new populations were discovered during the status survey, and additional sites were later discovered by R. Seymour in the Mammoth Cave area (D. White, KSNPC, 1996, *in litt.*). The 13 known sites in Kentucky are distributed as follows—one population from Grayson and Hardin counties, two populations from Edmonson and Barren counties, and seven populations from Hart County. Most of these populations have fewer than 15 individual plants, with four having only five or fewer plants. Only two populations occur on barrens, and half of these are threatened by weedy competitors and/or road maintenance. Five of the thirteen Kentucky populations are found entirely or partially on Federal lands (Mammoth Cave National Park), two on The Nature Conservancy's (TNC) land and the remainder are found along roadside rights-of-way or on private lands.

Previous Federal Action

Federal government actions on this species began with section 12 of the Act (16 U.S.C. 1531 *et seq.*). It directed the Secretary of the Smithsonian Institution (Smithsonian) to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, the Service also acknowledged its intention to review the status of those plant taxa named within the report. *Helianthus eggertii* was included in the Smithsonian report and also in the July 1, 1975, Notice of Review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) that determined approximately 1,700 vascular plant taxa, including *H. eggertii,* to be endangered pursuant to section 4 of the Act.

The 1978 amendments to the Act require that all proposals that are not finalized within two years be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing all plant species proposed in the June 16, 1976 rule. The revised Notice of Review for Native Plants published on December 15, 1980 (45 FR 82480), now included *H. eggertii* as a category 2 species. It was subsequently retained as a category 2 species when the Notice of Review for Native Plants was revised in 1983 (48 FR 53640), in 1985 (50 FR 39526), and again in 1990 (50 FR 61184). In 1990, category 2 species were those taxa for

which the Service had information indicating that proposing to list them as endangered or threatened might be appropriate; or for which substantial data on biological vulnerability and threats were not known at this time or were not on file to support the listing. This was the case with *H. eggertii;* the Service believed that additional surveys of potential habitat and further identification of threats were needed before a decision could be made on whether to propose listing the species. In 1989, the Service funded a survey to determine the status of *H. eggertii* in Alabama, Kentucky, and Tennessee; a final report on these surveys (Jones 1991) was accepted by the Service in 1991.

All plant taxa included in the comprehensive plant notices are treated as if under a petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. This was the case for *H. eggertii* because of the acceptance of the 1975 Smithsonian report as a petition. In 1983, the Service found that the petition calling for the listing of *H. eggertii* was not warranted because of insufficient data on its distribution, vulnerability, and degrees of threat. Information contained in the above-mentioned status survey completed these informational gaps and was sufficient and conclusive to warrant preparation of a proposed rule to list the species. *Helianthus eggertii* was accepted as a category 1 species on August 30, 1993, and was included in this category in the revised Notice of Review for Native Plants published on September 30, 1993 (50 FR 51144). On September 9, 1994 (59 FR 46607), the Service published a proposed rule to list Eggert's sunflower as threatened under the Act.

The processing of this final rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings during fiscal year 1997. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This rule falls under Tier 2. Presently, there are no pending Tier 1 actions in Region 4.

Summary of Comments and Recommendations

In the September 9, 1994, proposed rule (59 FR 46607) to list Eggert's sunflower as threatened and through other associated notifications, all interested parties were requested to submit factual reports and information that might contribute to the development of a final rule for this sunflower. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted by letter dated September 29, 1994. Legal notices were published in the *Hart County News Herald, Democrat-Union* (Lawrenceburg), and *Daily Herald* (Columbia) on September 27, 1994; in the *Blount Countian, State Journal* (Frankfort), *Chattanooga Times,* and *Dickson Herald* on September 28, 1994; in the *Edmonson News, Herald Chronicle* (Hart County), *Daily News* (Bowling Green), and *Lewis County Herald* on September 29, 1994, and in the *Manchester Times* on October 5, 1994.

Six individuals provided written responses on the proposed rule to list Eggert's sunflower. Four of the individuals who responded supported the listing, one requested information but did not support or oppose the listing, and one provided additional information but neither supported nor opposed the listing. All of these comments were incorporated into the final rulemaking.

The comment period on the proposed rule (59 FR 46607) was reopened on August 30, 1996 (61 FR 45931). Through associated notifications, interested parties were requested to submit factual reports and information that might contribute to the development of a final rule for this sunflower. One hundred and thirty-eight Federal and State agencies, county governments, scientific organizations, and interested parties were contacted by letter dated September 6, 1996. Legal notices were published in the *Herald Chronicle* on September 2, 1996; in the *Hart County News Herald* and *Nashville Banner* on September 3, 1996; in the *Blount Countian, Daily Herald* (Columbia, TN) *Chattanooga Times,* and *Dickson Herald* on September 4, 1996; in the *Edmonson News* and *Lewis County Herald* on September 5, 1996; in the *Frankfort State Journal* on September 6, 1996; and in the *Manchester Times* on September 11, 1996.

Eight written responses were received during the reopening of the comment period on the proposed rule to list Eggert's sunflower. One individual supported the listing and provided additional information; two State agencies supported the listing and provided additional information (KSNPC and TDEC); two private conservation organizations supported the listing and provided additional information (the Kentucky and Tennessee Chapters of TNC); one Federal agency supported the listing and provided additional information (AEDC); one Federal agency supported the listing but provided no additional information (U.S. Natural Resources Conservation Service, Tennessee); and one Federal agency (U.S. Forest Service) neither supported nor opposed the listing, but did provide additional information. These comments were also incorporated into the final rule.

The Service also solicited the expert opinions of three independent specialists regarding pertinent scientific and commercial data and assumptions relating to taxonomy and biological and ecological information for this species. The Service received one response from the specialists and these comments are incorporated into this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that Eggert's sunflower should be classified as a threatened species. Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *H. eggertii* (Eggert's sunflower) are as follows:

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

Most of the known populations of *H. eggertii* are threatened with destruction or adverse modification of their habitat. Over 50 percent of the known *H. eggertii* sites are threatened by the encroachment of more competitive herbaceous vegetation and/or woody plants that produce shade and compete with this species for limited water and nutrients. Active management is required to ensure that Eggert's sunflower continues to survive at all sites.

Since most of the sites where this species survives are artificial (not true barrens) or manmade habitats, such as rights-of-way or similar habitats that mimic barrens; direct destruction of this

habitat for commercial, residential, or industrial development or intensive rights-of-way maintenance (e.g., herbicide use) is a significant threat to most of the known populations.

Barrens habitat, which is preferred by Eggert's sunflower, is disappearing from the south-central United States at a rapid rate. Most of this type of habitat has been converted to croplands, pasture, or has been developed as residential or industrial sites. DeSelm (1989), in a study on Tennessee barrens, reported that all of his study sites were in the later stages of succession, with the prevention of fires being the major contributing factor.

As its natural habitat disappears, Eggert's sunflower is now found in habitats that replicate the species' ecological requirements. These sites, having the accompanying assortment of weedy vegetation associated with disturbed areas, typically are disturbed habitats, such as roadside rights-of-way, ditches, road cuts, or mounds of soil. Colonization most likely occurs soon after a disturbance to the habitat. Eggert's sunflower can initially compete with other vegetation. However, as successional stages progress, this species is consequently reduced to vegetative growth from rhizomes and is eventually eliminated. Periodic burning, mowing, or thinning of vegetation on these sites favors the species by lessening competition. This sunflower is persisting at several sites due to the current mowing regime.

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

At this time, there is little, if any, commercial trade in *H. eggertii*. Most populations are very small and cannot support the collection of plants for scientific and/or other purposes. Inappropriate collecting for scientific purposes or as novelties pose a threat to the species.

C. Disease or Predation

Disease and predation are presently not factors affecting the continued existence of the species. However, in several populations, larval insects were found to have destroyed nearly all the mature seeds in several flower heads (Jones 1991; personal observations, Ratzlaff 1992).

D. The Inadequacy of Existing Regulatory Mechanisms

Helianthus eggertii is a Species of Special Concern in Tennessee, and it does not receive any formal protection since it is not listed as endangered under the State's Rare Plant Protection and Conservation Act. In Alabama, the species does not receive any State protection, and in Kentucky, it is listed as endangered by the Kentucky Academy of Science and KSNPC (Branson *et al.* 1981, Warren *et al.* 1986). However, these lists have no legal standing in the State.

The Act will afford additional protection to populations that occur on Federal lands and will protect other populations when the taking is in violation of any State law, including State criminal trespass laws. Protection from inappropriate interstate commercial trade will also be provided for under the Act.

E. Other Natural or Manmade Factors Affecting its Continued Existence

An additional factor that threatens the survival of *H. eggertii* is extended drought. Dry conditions cause higher than normal mortality of seedlings in the natural populations. If drought continues over an extended period of time, it could have an adverse effect on the survival of the species, itself. Additionally, dwindling numbers in the populations of this species could increase the potential for inbreeding depression and other reproductive-related problems.

In determining to make this rule final, the Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to list Eggert's sunflower as threatened. This sunflower is presently known from 34 populations in 14 counties—in Alabama, one population in Blount County; in Kentucky, one population from Grayson and Hardin counties, two populations from Edmonson and Barren counties, and seven populations from Hart County; in Tennessee, one population each in Dickson, Marion, and Williamson counties, two in Maury County, two in Franklin County and two ''occurrences'' are included as a portion of the AEDC population in Coffee County, three in Lewis County, four in Lawrence County, and six in Coffee County. The species is threatened throughout its range by habitat alteration; residential, commercial, and industrial development; plant succession; and the conversion of its limited habitat to pasture or croplands. Additionally, herbicide use, particularly along roadsides, also poses a threat. See the ''Critical Habitat'' section for a discussion of why critical habitat is not being proposed for this plant.

Critical Habitat

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent at this time for *H. eggertii*. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) the designation of critical habitat would not be beneficial to the species.

Section 7(a)(2) and regulations codified at 50 CFR part 402 require Federal agencies, in consultation and with the assistance of the Service, to ensure that those activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat, if any is designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of its proposed critical habitat (see ''Available Conservation Measures'' section for a further discussion of section 7). As part of the development of this rule, Federal and State agencies were notified of the plant's general distribution, and they were requested to provide any and all data on proposed Federal actions that might adversely affect the species. No specific projects were identified during the initial comment period. However, during the listing moratorium, the Arnold Engineering Development Center of the U.S. Air Force (AEDC) entered into section 7 consultation with the Service (Cookeville Field Office) concerning the proposed training of the National Guard on a base where *H. eggertii* occurs. The Air Force has since requested a formal conference. The Service has been working closely with the AEDC on a conservation plan that benefits the species and allows the Air Force to carry out its mission. No additional projects were identified during the second comment period. Should any future projects be proposed in areas inhabited by this plant, the involved Federal agency will be given the general distributional data necessary to determine if the species would be

impacted by their action. If needed, more specific distributional information will be provided.

Most populations of this species are small, and even the loss of a few plants to such activities as scientific collecting, could extirpate this sunflower from several locations. Therefore, publication of critical habitat descriptions and maps would increase the vulnerability of the species to vandalism without significantly increasing protection. The private landowners and local, State and Federal managers on whose property that all the known populations of *H. eggertii* occur, will be made aware of the location of existing plants and the importance of protecting them and their habitat. No additional benefits would result from the designation of critical habitat. Therefore, the Service concludes that it is not prudent at this time to designate critical habitat for the species. Existing precise locality data will be made available to appropriate Federal, State, and local government agencies from the Service office described in the **ADDRESSES** section or from the Service's Cookeville Field Office, 446 Neal Street, Cookeville, Tennessee 38501.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions to be taken by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is being proposed or is already listed as endangered or threatened and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action adversely affects a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. Most *H. eggertii* populations are found on privately-owned or State-owned lands. However, one entire population and portions of four others are found in Mammoth Cave National Park (U.S. Park Service) and one population (that includes 62 ''occurrences'') of *H. eggertii* is on AEDC lands.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.67, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection will apply to this species in the future if such regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided, when commercially shipped, the containers are marked ''Of Cultivated Origin.'' Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation and/or the survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, and/or special purposes consistent with the purposes of the Act. It is anticipated that few commercial permits would ever be sought or issued since the species is not in cultivation and is not common in the wild.

It is the policy of the Service (59 FR 34272) to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the species' range. Of the 34 remaining populations of Eggert's sunflower, six populations are found entirely or partially on Federal lands. Collection, damage, or destruction of this species on public lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Removal, cutting, digging up, or damaging or destroying endangered plants on non-Federal lands constitutes a violation of section 9 only if conducted in knowing violation of any State law or regulation, including State criminal trespass law. This would not affect any activities in Alabama, or Kentucky, as neither Alabama nor Kentucky State laws provide any protection for plants. In Tennessee, *Helianthus eggertii* is protected under the Rare Plant Protection and Conservation Act of 1985, which controls the removal of plants from State properties for scientific, educational, or propagative purposes, and the disturbance of the species on private lands is not allowed without the landowner's consent. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing which could result in a violation of section 9 of the Act.

Questions on whether specific activities could or will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Asheville Field Office (see the ''Addresses'' section) or to the Cookeville Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501 (615/528–6481). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, Georgia 30345 (Phone 404/679–7313; Fax 404/679–7081).

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

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Author

The primary author of this final rule is Mr. J. Allen Ratzlaff, Asheville Field Office, (See **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS:							
*	*	*	*	*	*	*	
Helianthus eggertii	Sunflower, Eggert's	U.S.A. (AL, TN, KY).	Asteraceae	T	613	NA	NA
*	*	*	*	*	*	*	

Dated: April 8, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–13412 Filed 5–21–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 960805216–7111–06; I.D. 121796B]

RIN 0648–AH06

Fisheries of the Northeastern United States; Regulatory Amendment to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Commercial Quota Harvested for Delaware and New Hampshire

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; commercial quota harvest.

SUMMARY: NMFS issues this final rule to implement approved measures contained in a regulatory amendment to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP). This regulatory amendment revises the allocation and management of the commercial scup quota. As a consequence of this rule, NMFS further announces that no commercial scup quota is available for the States of Delaware and New Hampshire for the 1997 Summer period, which ends October 31, 1997.

EFFECTIVE DATE: May 20, 1997.

ADDRESSES: Copies of the regulatory amendment are available upon request from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Andrew A. Rosenberg, Ph.D., Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508–281–9221.

SUPPLEMENTARY INFORMATION: This final rule implements approved measures contained in the regulatory amendment to the FMP, which was prepared by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). Background concerning the development of this regulatory amendment was provided in the notice of proposed rulemaking (62 FR 5375, February 5, 1997), and is not repeated here.

This rulemaking revises the manner in which the annual commercial quota is allocated to the scup fishery. With this revision, the total annual allowable catch (TAC) for the commercial fishery

is allocated into two Winter periods: January–April (Winter I) and November–December (Winter II); and one Summer period: May–October (Summer). Based on historical landings data, the quota is allocated to each period as follows: Winter I—45.11 percent; Summer—38.95 percent; and Winter II—15.94 percent. Discard estimates for each period are subtracted from the TAC for each period to derive the commercial quota for each period. The quota for each of the two Winter periods is allocated on a coastwide basis to the coastal states from Maine to North Carolina. During these Winter periods, coastwide landings (trip) limits, recommended by the Council and Commission as part of the annual fishing measures and implemented by the states, are in effect. This regulatory amendment specifies that during the 1997 Winter II period, the landings limit will be 12,000 lb (5,443 kg) for vessels with a Federal scup moratorium permit. During the Summer period, the quota is distributed among the coastal states based on the percentage shares specified in this regulatory amendment. The states are responsible for the management of their respective quotas.

Disapproved Measure

NMFS announces the disapproval of the *de minimus* provision specified in this regulatory amendment because it violates national standard 7, raises questions of consistency with national standard 1, and appears to be arbitrary and capricious. This measure would require an annual examination of state landings to determine if a state should be granted *de minimus* status. *De minimus* is defined as landings in a state during the Summer period that are less than 0.1 percent of the overall Summer quota. This determination was to be based on landings for the last preceding year for which data are available. The *de minimus* measure imposes an administrative burden and cost without conferring any demonstrable administrative or conservation benefit. Consequently, this provision contravenes the requirements of national standard 7.

In the preamble to the proposed rule to implement this regulatory amendment, NMFS noted that the *de minimus* provision was unclear and invited comments specific to the operation of this provision. The Council and the State of Delaware's Division of Fish and Wildlife submitted comments to interpret the provision. However, the comments did not address NMFS' concern that it is not clear from the record if a *de minimus* state must close its state fishery when its quota is harvested. A state's failure to close its fishery when its quota is harvested would prevent the attainment of the exploitation rate reduction goals in the FMP, since vessels without Federal permits fishing exclusively in that state's waters could continue to land scup. This would result in overfishing and renders the measure inconsistent with national standard 1.

If *de minimus* status does not, at the very least, require a state to impose landing constraints, the provision would encourage owners of vessels that have not traditionally landed in that state to land amounts of scup much larger than they could land in their home port states. This could result in the state's *de minimus* quota being rapidly exceeded and compound the overfishing situation if a *de minimus* state is not required to close its fishery when its *de minimus* quota is harvested.

Further, the standard established to determine *de minimus* status (examination of landing data for the last year for which data are available) appears arbitrary and capricious. Landings in the intervening time period in the state under consideration for *de minimus* status could well exceed the threshold for such status. Thus, such a determination would not reflect accurately the true status of the state.

Last, the *de minimus* provision submitted by the Council and Delaware included measures that went beyond the scope of measures taken to public hearing. For instance, the Council suggested prohibiting scup landings by any federally permitted vessels in a state granted *de minimus* status. To implement this provision at this point would be inconsistent with the Administrative Procedure Act because the public has had no opportunity to participate in this measure's development or to comment on it. Also, note that Table 2 in this final rule lists the states and their percent shares for the Summer period commercial quota. These percent shares are the same as were listed in the proposed rule. However, had the *de minimus* provision been approved, these percent shares would have changed.

Approved Measures: Implementation of the Revised Quota System

A coastwide commercial quota for scup was implemented on January 1, 1997. Final specifications, effective March 11, 1997 (62 FR 12105, March 14, 1997), apportioned a quota of 6.0 million lb (2.7 million kg) to the commercial scup fishery. This quota was derived by subtracting an estimated 1997 discard of 1.103 million lb (0.5 million kg) from the 7.103 million lb (3.2 million kg) allocated to the commercial sector. This regulatory amendment specifies that any quota harvested between January 1, 1997, and April 30, 1997, will count against the Winter I allocation. Any landings in excess of the 1997 Winter I allocation will be deducted from the allocation for the 1997 Winter II period. Landings in excess of the total of both 1997 Winter periods will be deducted from 1998 Winter periods. This deduction would not affect the Summer allocation in either year. However, current data show approximately 800,000 lb (362,874 kg) have been landed through March 22, 1997. Therefore, an overage of the Winter I allocation, specified in the table below, would be unlikely. As such, no adjustment is necessary to the Winter II allocation. However, if additional data become available that show landings during this time are in excess of the Winter I allocation, an adjustment will be made and the public informed through notification in the **Federal Register**.

A summary of the 1997 allocations for the three periods is shown in Table 1.

TABLE 1.—PERIOD ALLOCATIONS OF COMMERCIAL SCUP QUOTA

Period	Percent	TAC [1]	Discards [2]	Quota allocation	
				(pounds)	(kilograms) [3]
WINTER I	45.11	3,204,163	497,563	2,706,600	1,227,693
SUMMER	38.95	2,766,619	429,619	2,337,000	1,060,045
WINTER II	15.94	1,132,218	175,818	956,400	433,816
TOTAL	100.00	7,103,000	1,103,000	6,000,000	2,721,554

[1] Total Allowable Catch, in pounds. [2] Discard estimates, in pounds. [3] Kilograms are as converted from pounds.

The 1997 commercial quota for the Summer period (2,337,000 lb; 1,060,045 kg), apportioned among the states according to the percentage shares specified in § 648.120(d)(3), is presented in Table 2.

TABLE 2.—SUMMER PERIOD (MAY–OCTOBER) COMMERCIAL QUOTA SHARES

State	Share (percent)	1997 allocation	
		(pounds)	(kilograms) [1]
Maine	0.13042	3,048	1,383
New Hampshire	0.00004	1	0
Massachusetts	15.49117	362,029	164,214
Rhode Island	60.56588	1,415,425	642,026
Connecticut	3.39884	79,431	36,029
New York	17.05295	398,527	180,769
New Jersey	3.14307	73,453	33,318
Delaware	0.00000	0	0
Maryland	0.01288	301	137
Virginia	0.17787	4,157	1,886
North Carolina	0.02688	628	285
Total	100.00000	2,337,000	1,060,045

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Section 648.121(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the Summer period state commercial quotas and determine the date when a state commercial quota is harvested. NMFS is required to publish notification in the **Federal Register** advising a state and notifying vessel and dealer permit holders that, effective upon a specific date, a state's Summer period commercial quota has been harvested and that no Summer period commercial quota is available for landing scup in that state for the remainder of the period. Because the amount of commercial quota that is allocated for the Summer period to the State of New Hampshire is 1 lb (less than 1 kg) and to the State of Delaware is 0 lb (0 kg), the Regional Administrator has determined that no quota is available for landings in those states for the Summer period.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land scup in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours May 20, 1997, until 2400 hours, October 31, 1997, landings of scup in New Hampshire or Delaware by vessels holding commercial Federal fisheries permits are prohibited, unless quota becomes available through a transfer and is announced in the **Federal Register**. Federally permitted dealers are also advised that they may not purchase scup from federally permitted vessels that land in New Hampshire or Delaware for the remainder of the Summer period or until quota becomes available through a transfer.

Comments and Responses

Written comments from the Commonwealth of Massachusetts Division of Marine Fisheries (MA-DMF); the Commonwealth of Massachusetts Executive Office of Environmental Affairs, Office of Coastal Zone Management (MA–OCZM); the State of Delaware Division of Fish and Wildlife (Delaware); the Council; three fishing industry associations; one U.S. Congressman; and six members of the public were received during the public comment period, which ended on March 7, 1997. One association letter was accompanied by a petition that was signed by 314 individuals. Several written comments were also received during the public comment period that were not relevant to the proposed rule for this regulatory amendment. Those comments are not addressed here.

Comment: Delaware and the Council submitted a comment to explain the *de minimus* provision. Specifically, Delaware interpreted the provision to include the following points, and the Council concurred: (1) *De minimus* status would be valid for 1 year; (2) *de minimus* quota would be equal to 0.1 percent of the coastwide summer total and that amount would be subtracted from the remainder prior to allocation to the other states; (3) no landings of scup would be permitted by federally permitted fishing vessels in states granted *de minimus* status; (4) to apply for *de minimus* status, a state must show ''reasonable steps'' were taken to assure landings would not exceed its *de minimus* allocation; (5) landings in excess of a *de minimus* state's allocation would be taken off next year's allocation; (6) states granted *de minimus* status would submit an annual report to the Monitoring Committee, the Council, and the Board, detailing scup landings and compliance.

Response: For the reasons noted in the preamble of this final rule, NMFS has disapproved the provision to grant *de minimus* status to states. As noted in the preamble, the clarification submitted did not clarify adequately the measures and actually raised new concerns about the provision.

Comment: One industry association urged disapproval because of the rapid pace used to develop the quota measure. The association felt that there was inadequate time for constructive discussion of the alternatives.

Response: Amendment 8 to the FMP, approved on July 29, 1996 (61 FR 43420, August 23, 1996), stressed the Council's intention to revise the coastwide commercial quota allocation system contained within it. Since the Council contemplated revisions in Amendment 8, those changes are promulgated through this regulatory amendment, instead of a plan amendment. However, a regulatory amendment does not exempt an action from full public participation afforded under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Public hearings for this regulatory amendment were held from September 10, 1996,

through September 12, 1996, in coastal communities from Buzzards Bay, MA, to Cape May Courthouse, NJ. This schedule of hearings invited widespread public input into the development of the regulatory amendment, including its alternatives. This schedule is entirely consistent with the legal requirements that pertain to the fishery management plan development process.

Comment: Two commenters urged disapproval of the regulatory amendment as inconsistent with national standard 4. One U.S. Congressman recommended disapproval of the regulatory amendment because of the Summer allocations to the states and his concern about the Massachusetts allocation. One individual requested that NMFS disapprove the regulatory amendment, because he feels it is based on inaccurate data, fails to address differing discard rates by gear type, and imposes no effort control on gear types with high discard rates. This commenter believes that national standard 4 is violated by both the coastwide quota approved under Amendment 8 to the FMP and this regulatory amendment.

Response: For the reasons noted in this preamble, NMFS determined all measures except *de minimus* to be consistent with the national standards and all other applicable laws. NMFS disagrees that annual allocations, or their distribution in either Amendment 8 or this regulatory amendment, violate national standard 4. For the most part, the distribution of the allocations is on a coastwide basis. During the Winter period coastwide quotas, all industry participants will operate under uniform landings limits regardless of where they are fishing or in which state they reside. A coastwide quota does not have a discriminatory effect between residents of different states, as such a measure is indifferent to the location of the fishing effort that results in its harvest. While many would like to see higher annual quotas, that desire conflicts with the conservation goals established in Amendment 8, which are consistent with the principal focus of the Magnuson-Stevens Act to prevent overfishing and to rebuild overfished stocks, of which scup is one. This approach to management does not raise any issues with respect to national standard 4. Further, the state-by-state quota system in the Summer period established by this regulatory amendment is equally consistent with national standard 4.

National standard 4 requires that any allocation be fair and equitable to all participants in the fishery. This requirement does not translate into a management scheme in which all state quotas have to be the same or similar. The fair and equitable aspect of national standard 4, as applied to this regulatory amendment, relates to the manner in which the allocation is assigned to the states. In this instance, during the Summer period, the assignment of the quota to the states is based on the same formula. Each state receives a percentage of the quota based on the percentage of the overall catch represented by the states' landings data from 1983 through 1992. The states are going to share the quota differently since their historical percentage of the overall landings are different. The historical landings data are the best available data upon which to base the allocation system. Use of these data is consistent with the requirements of national standard 2. Further, the regulatory amendment specifies that those percentages may be revised if additional data are provided to indicate that a state's landings data were incomplete.

This regulatory amendment cannot impose effort control on gear types with high discard rates because at the present time such information is not available for analysis. The issue is addressed elsewhere in this preamble.

Comment: Two industry associations expressed their belief that the data available are inadequate for use as a basis for management.

Response: NMFS disagrees that available data are not sufficient to support the measures in this regulatory amendment. The measures rely upon the best scientific data available from both NMFS and the states. While data are lacking for certain elements of this fishery—notably landings from some states' inshore handline fisheries—this regulatory amendment does contain the provision to allow states to revise their summer shares based on amended data for the historical period. Further, if gear-specific data become available, that data could be reflected in the annual quota calculation.

Comment: The MA–DMF commented that the regulatory amendment violates national standard 9 because it fails to reduce bycatch.

Response: To begin addressing discards in the scup fishery, and bycatch of scup in other fisheries, the final specifications for the 1997 scup fishery revised gear requirements for the commercial sector of this fishery. Specifically, the minimum codend mesh for otter trawl vessels was increased to 4.5 inches (11.43 cm), triggered by the harvest of a threshold of 4,000 lb (1,814 kg) from November through April, and 1,000 lb (453 kg) from May through October. The intent of this measure is to encourage offshore vessels that target squid with 1.875 inch (4.76 cm) mesh, to move off concentrations of scup, unless the vessel intends to continue fishing with the larger mesh. As the regulatory amendment calls for discards to be subtracted from a period's TAC, there is further incentive to discard less, as lower levels of discards could also be reflected in the annual quota calculation. This approach is consistent with national standard 9 that directs, in part, that to the extent practicable, bycatch should be minimized.

Comment: One industry association expressed concern about the adequacy of data available to estimate discards (referring to the estimate as ''subjective'') and also about the methods for using those data in calculating the quotas.

Response: Since the estimate of scup discards are the best available data at this time, it would be inappropriate to characterize these data as ''subjective.'' The term ''subjective'' implies that the estimates are modified by individual bias, when, in fact, the estimates used are based on direct observations from sea sampling and landings. These data are the best scientific information available to NMFS. The estimation methodology has been reviewed and accepted by the NMFS Stock Assessment Workshop process, which is a peer-reviewed process involving participants from academia, Federal and state agencies, and industry.

With this regulatory amendment, the discard estimates attributable to a period are to be subtracted from that period's TAC. The first step in estimating a TAC (used to determine the quota) is estimating current stock size. That stock size estimate is based on an analysis of the effects of both discards and landings. The target exploitation rate, including the effects of both discards and landings, is then ''plugged into'' the current stock size to determine the TAC. It is assumed that the observed discard pattern (including the ratio of discards to landings of fish at each age) in a given year will persist in the year for which the TAC is allocated. Thus, the TAC equals landings plus discards. If discards are not subtracted from the TAC, and the entire TAC is allowed as landings, then the target exploitation rate will be substantially exceeded.

Comment: Three industry associations, two individuals, and the MA–DMF questioned the adequacy of discard data used in calculating the commercial quota. Concern was expressed about inadequate sea sampling of offshore freezer trawler vessels and the lack of specific action to reduce discards. The MA–DMF

contends that the treatment of the discard data is inequitable to the Massachusetts fishery.

Response: The amount of discard data that may be collected is dependent on the amount of funding available for sea sampling in a given year. NMFS notes that sea sampling is especially difficult for the scup fishery, as the fishery is pursued over a wide geographic range as well as a wide range of seasons and gear types. However, this regulatory amendment and the existing FMP rely on data that are the best available scientific information.

Comment: Three industry associations and one U.S. Congressman felt the regulations gave no consideration to past conservation actions taken by the Commonwealth of Massachusetts and that Massachusetts lacks effective participation in fishery management plans administered jointly by the Council and Commission. Some of these commenters felt that this apparent lack of participation by Massachusetts was in violation of national standard 4.

Response: The allocation of commercial quota is based on data for a state's historical fishery from the base years of 1983 through 1992 and includes all data supplied by NMFS and the states for those years. Measures adopted by Massachusetts in 1992 and subsequent years, including a ban on night dragging and minimum fish size, are commendable and excellent conservation measures for the scup stock. However, those measures do not impact the landings during the base years that define the historical fishery in this regulatory amendment.

This regulatory amendment, as well as the FMP, was prepared jointly by the Council and the Commission, with assistance provided by the New England Fishery Management Council. Massachusetts effectively participated in the development of this regulatory amendment through two of those bodies: The New England Fishery Management Council, on which Massachusetts holds a voting seat, and the Commission, which votes on actions independent of the Council by way of the Summer Flounder, Scup, and Black Sea Bass Board (Board). A representative of Massachusetts chairs the Commission's Board. Massachusetts' participation, or any lack thereof, does not raise any issues with respect to national standard 4 that have not been addressed above.

Comment: One industry association made a specific request to eliminate wasteful, harmful fishing practices and encourage conservation by exempting handlines, scup pots, and weirs from the quota plan.

Response: The commercial quota is one of the major conservation measures to achieve the target exploitation rates of the FMP. The FMP specifically requires that all scup landed for sale in a state, regardless of where or how it is harvested, count against the quota. Therefore, there is no provision in the regulations to exempt the catch taken by any specific gear type from the quota. The commenter did not elaborate on how such an exemption from the quota by a user group would discourage wasteful and harmful fishing practices or encourage conservation. The commenter offered no alternative that would allow the inshore industry to assist in meeting the reductions in exploitation mandated by the FMP.

Comment: One industry association and one individual felt this regulatory amendment discriminated against specific gear types because the discard deduction does not distinguish between different fishing methods.

Response: The data presently available do not provide the basis to manage individual gear types differently. However, the regulatory amendment does provide a mechanism that will allow future consideration of gear differences, should such data become available.

Comment: Two individuals expressed concern that the quota would be caught early in the fishing year and that there would be no fishery for the summer inshore commercial fishery in Massachusetts.

Response: This regulatory amendment incorporates language to address specifically this concern. Any overages that occur in the 1997 Winter I allocation, and made prior to implementation of this regulatory amendment, will be taken off the 1997 Winter II and subsequent Winter periods. In 1998 and beyond, overages in a period's allocation will be deducted from that period the following year. In no scenario will an overage from a winter fishery impact a Summer period allocation.

Comment: One industry association and one member of the public commented that this regulatory amendment would financially devastate coastal communities. The association noted that almost all of its members derive greater than 50 percent of their income from the commercial harvest of scup. They feared that between May 1 and May 15 or 20, when trap fishermen and handliners normally start harvesting, the quota could be filled by draggers issued a Massachusetts Coastal Access vessel permit. As a result, Massachusetts' fishery would close before they could fish. This early closure would result in financial devastation for the coastal communities in which they do business.

Response: Under this rule, the commercial quota for the Summer scup fishery (May through October) will be managed on a state-by-state basis. This regulatory amendment requires the full cooperation of the states in order for the entire FMP to be successful. The states may implement their Summer allocation in a manner that best suits their individual fisheries. Massachusetts may choose to implement its quota using trip limits or other measures to preserve quota for particular sectors of its industry. Such measures, implemented by the State, would serve to mitigate the financial impacts of the Summer quota. The Assistant General Council for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, when this rule was proposed, that this rule is not expected to have a significant economic impact on a substantial number of small entities. That certification, including the reasons for it, was published in the preamble to the proposed rule (62 FR 5375, February 5, 1997). This regulatory amendment is intended to preserve the historical pattern of commercial harvest of scup by seasons, thus reducing the impact on small entities that may otherwise be felt under a coastwide quota with no method of controlling the rate of harvest.

Comment: One industry group and one member of the public expressed concern for participants in the recreational fishery because of the belief that the group, although large in number, receives very little quota and will be negatively impacted by this regulatory amendment.

Response: This regulatory amendment has no impact on the recreational fishery. The recreational sector of the fishery is currently operating under a target harvest limit that is not revised by this action. Final specifications for the commercial and recreational scup fisheries were published on March 14, 1997 (62 FR 12105). Those specifications allocate 6.0 million lb (2.7 million kg) to the commercial sector and 1.947 million lb (0.88 million kg) to the recreational sector. Neither allocation is changed by this regulatory amendment.

Comment: The MA–CZM commented that the Council should consider measures other than quota to control fishing (e.g., ban night trawling, etc.), as Massachusetts did several years ago.

Response: The commercial quota revised by this action is but one of several measures implemented under

Amendment 8 to control fishing mortality in the scup fishery. Other measures include a moratorium on new entrants into the fishery, gear restrictions, minimum fish size, pot/trap requirements, and a target harvest level for the recreational fishery. Generally, controls on fishing gear, such as mesh and escape vent sizes, control the rate of mortality on sublegal fish, i.e., fish that are not yet vulnerable to the gear. The quota measures constrain the number of legal sized fish that may be removed from a stock. These two measures combined are intended to achieve the goals of the FMP to reduce overfishing on the scup stock.

Comment: The MA–DMF commented that the mixed species/discard problem is not resolved with minimum fish and mesh size requirements. The MA–DMF strongly advocates large season/area closures in offshore waters, particularly during the fall through spring seasons to reduce the discard of small scup.

Response: NMFS agrees that such measures may be prudent for this fishery, and deserve to be seriously considered for implementation in 1998.

Changes From the Proposed Rule

This final rule implements the provisions of the regulatory amendment by amending 50 CFR part 648, Fisheries of the Northeastern United States. As a result of the President's Regulatory Reinvention Initiative, regulatory language for all of the fishery management plans within the purview of the Council and the New England Fishery Management Council were consolidated into part 648. In some cases, this final rule mentions fisheries other than scup in the regulatory language. The regulations governing these other fisheries have not been amended here and their mention in the regulatory language is merely to reduce confusion for the reader.

In § 648.14, paragraph (a)(89), the phrase ''fish for, catch or retain'' is revised to read ''fish for, catch and retain, or land'' to clarify the prohibition on landing more than the limit.

Since the measure to grant *de minimus* status to a state was disapproved by NMFS, in § 648.120, paragraphs (b)(2) through (b)(8) are redesignated as (b)(4) through (b)(10) and proposed paragraphs (b)(4) and (e) are removed from the regulations.

The paragraph specifying states' shares in proposed § 648.120(d)(7) is corrected to read ''(d)(3),'' and the requirement that the Council and Commission recommend to the Regional Administrator that the seasonal allocations in paragraph (d)(1) be revised as a result of changes in landings data available from the states for the base years 1983–92, is added.

Proposed § 648.120(f) is redesignated as § 648.120(e).

Classification

This rule will enhance the efficiency of the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries, and offer benefits in implementing the commercial quota provisions of this joint plan by redistributing the quota in the manner already approved by the Commission. In order to realize these benefits, this rule must be effective as close as possible to May 1, the start of the 1997 Summer period. Therefore, there is good cause under 5 U.S.C. 553(d)(3) not to delay for 30 days the effective date of these regulations but to make them effective upon the date of filing for public inspection at the Office of the Federal Register.

The Regional Administrator determined that this regulatory amendment is necessary for the conservation and management of the scup fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

Notwithstanding any other provision of the law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the PRA. The state request to transfer quota has been approved by OMB under control number 0648–0202 and is estimated to average 1 hour per response. The estimated response time includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, when this rule was proposed, that the management measures contained in this regulatory amendment will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are contained in the certification, which was published as part of the preamble to the proposed rule (62 FR 5375, February 5, 1997) and are not repeated here.

NMFS received several comments from representatives of the Massachusetts inshore fishery regarding the economic impacts of this rulemaking, but none specifically addressing this certification. These comments were addressed in the Comments/Response section of this final rule. The commenters noted primarily that many participants in the inshore segment of the Massachusetts fishery derive a significant portion of their income from the harvest of scup during the Summer period. Other comments stressed that many of the landings from this segment of the fishery are not represented in the scup landings database. The commenters have come forward with concerns that can not be confirmed by the scup landings database. Without specific data on the level of fishing historically undertaken by the inshore segment of the commercial scup fishery, it is impossible to analyze the economic impacts on the inshore Massachusetts fishery versus the fishery as a whole. If the inshore fishery is taken as a distinct universe of participants for the purpose of determining impacts under RFA, it is conceivable that this action may meet the criteria for significant impact, as the commenters claim. However, NMFS cannot confirm that claim because data are lacking for that segment of the fishery. The comments did not provide any information changing the basis for the certification. As a result, no regulatory flexibility analysis was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 16, 1997.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.4, paragraph (b) is revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

* * * * *

(b) *Permit conditions.* Any person who applies for a fishing permit under this section must agree as a condition of the permit that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium permit must also agree not to land summer flounder, scup, or black sea bass, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup, or black sea bass, either directly or through a coastwide allocation, is deemed to have no commercial quota available. Owners or operators fishing for surf clams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surf clam and ocean quahog requirement of this part differs from a surf clam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surf clams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surf clam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters. If the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3′ N. lat., any vessel owners that hold valid commercial permits for both the black sea bass and the NMFS Southeast Region Snapper-Grouper fisheries may surrender their moratorium Black Sea Bass permit by certified mail addressed to the Regional Administrator and fish pursuant to their Snapper-Grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3′ N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

* * * * *

3. In § 648.14, paragraphs (a)(89) through (a)(101) are redesignated as (a)(90) through (a)(102), respectively, and a new paragraph (a)(89) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(89) Fish for, catch and retain, or land scup in or from the EEZ north of 35°15.3′ N. lat. in excess of the landing limit established pursuant to § 648.120 (b)(2) and (b)(3).

* * * * *

4. In § 648.120, paragraph (b)(1) is revised, paragraphs (b)(2) through (b)(8) are redesignated as paragraphs (b)(4) through (b)(10), respectively, new paragraphs (b)(2) and (b)(3) are added, paragraphs (c) and (d) are revised, and paragraph (e) is added to read as follows:

§ 648.120 Catch quotas and other restrictions.

* * * * *

(b) * * *

(1) The commercial quota for each of the three periods specified in paragraph (d)(1) of this section, to be set from a range of 0 to the maximum allowed to achieve the specified exploitation rate. The commercial quota will be established by estimating the annual total allowable catch (TAC), allocating it into the three periods, and deducting the discard estimates for each period.

(2) Landing limits for the Winter I and Winter II periods.

(3) Percent of landings attained at which the landing limit for the Winter I period will be reduced.

* * * * *

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the specified exploitation rate will not be exceeded. The MAFMC shall review these recommendations and, based on these recommendations and any public comment, recommend to the Regional Administrator measures necessary to assure that the specified exploitation rate will not be exceeded. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, NMFS will publish a proposed rule in the **Federal Register** by October 15 to implement a commercial quota, specifying the amount of quota allocated to each of the three periods, landing limits for the Winter I and Winter II periods, the percentage of landings attained during the Winter I fishery at which the landing limits will be reduced, a recreational harvest limit and additional management measures for the commercial fishery. NMFS will publish a proposed rule in the **Federal Register** by February 15 to implement additional management measures for the recreational fishery, if the Regional Administrator determines that such measures are necessary to assure that the specified exploitation rate will not be exceeded. After considering public comment, NMFS will publish a final rule in the **Federal Register** to implement the annual measures.

(d) *Distribution of Commercial Quota.* (1) The annual commercial quota will be allocated into three periods, based on the following percentages:

Period	Percent
Winter I—January–April	45.11
Summer-May–October	38.95
Winter II—November–December	15.94

(2) The Winter I and Winter II commercial quotas will each be distributed to the coastal states from Maine through North Carolina on a coastwide basis.

(3) The Summer commercial quota will be allocated to the coastal states from Maine through North Carolina, based upon the following percentages:

SUMMER PERIOD (MAY–OCTOBER) COMMERCIAL QUOTA SHARES

State	Share (percent)
Maine	0.13042
New Hampshire	0.00004

SUMMER PERIOD (MAY–OCTOBER) COMMERCIAL QUOTA SHARES—Continued

State	Share (percent)
Massachusetts	15.49120
Rhode Island	60.56589
Connecticut	3.39884
New York	17.05295
New Jersey	3.14307
Delaware	0.00000
Maryland	0.01286
Virginia	0.17789
North Carolina	0.02690
Total	100.00000

(4) All scup landed for sale in any state during either Winter I or Winter II shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested. All scup landed for sale in a state during the Summer period shall be applied against that state's summer commercial quota, regardless of where the scup were harvested.

(5) All scup landed for sale in any state during the period January 1, 1997, through April 30, 1997, shall be applied against the coastwide commercial quota for the 1997 Winter I period, regardless of where the scup were harvested. Any landings during that time in excess of the 1997 Winter I commercial quota will be subtracted from the 1997 Winter II period's allocation. Any overage beyond the 1997 Winter II allocation will be deducted from subsequent winter periods.

(6) Beginning in 1997, any overages of the commercial quota landed in any state during the Summer period will be deducted from that state's Summer period quota for the following year. Beginning in 1998, any overages of the commercial quota landed in any Winter period will be subtracted from the period's allocation for the following year.

(7) Based upon any changes in the landings data available from the states for the base years 1983–92, the Commission and the Council may recommend to the Regional Administrator that the states' shares specified in paragraph (d)(3) of this section and the period allocations specified in paragraph (d)(1) of this section be revised. The Council's and the Commission's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the Commission and the Council. After such review, NMFS will publish a proposed rule in the **Federal Register** to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the **Federal Register** to implement the changes in allocation.

(e) *Quota transfers and combinations.* Any state implementing a state commercial quota for scup may request approval from the Regional Administrator to transfer part or all of its Summer period quota to one or more states. Two or more states implementing a state commercial quota for scup may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for scup must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his or her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall Summer period quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Summer Flounder, Scup, and Black Sea Bass FMP and the Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the Summer period for which the request was made and will be effective upon the filing by NMFS of a notification of approval of the quota transfer or combination with the Office of the Federal Register.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notification of approval of the quota transfer or combination has been filed at the Office of the Federal Register.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the Summer period, the overage will be deducted from the following Summer period's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous Summer period. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall Summer period quota specified in paragraph (d) of this section.

5. Section 648.121 is revised to read as follows:

§ 648.121 Closures.

(a) *Winter closures.* The Regional Administrator will monitor the harvest of commercial quota for each Winter period based on dealer reports, state data, and other available information and shall determine the date when the commercial quota for a Winter period will be harvested. NMFS shall close the EEZ to fishing for scup by commercial vessels for the remainder of the indicated period by publishing notification in the **Federal Register** advising that, effective upon a specific date, the commercial quota for that period has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup for the remainder of the period.

(b) *Summer closure.* The Regional Administrator will monitor the Summer period state commercial quota based on dealer reports, state data, and other available information, and shall determine the date when a state's commercial quota will be harvested. NMFS shall publish notification in the **Federal Register** advising a state that, effective upon a specific date, its Summer period commercial quota has been harvested and notifying vessel and dealer permit holders that no Summer period commercial quota is available for landing scup in that state for the remainder of the period.

[FR Doc. 97–13504 Filed 5–20–97; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 62, No. 99
Thursday, May 22, 1997

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–211–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require performing a one-time inspection of the dropout boxes of the passenger oxygen system to detect discrepancies and determine whether the system operates properly; correcting any discrepancy found; and reworking or installing new components, if necessary. This proposal is prompted by a report indicating that the oxygen system failed to operate correctly after activation at a low cabin pressure due to the incorrect installation of the oxygen masks or oxygen generators during manufacturing. The actions specified by the proposed AD are intended to ensure that a sufficient supply of oxygen is provided to airplane passengers in the event of rapid decompression of the airplane.

DATES: Comments must be received by July 3, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, Saab Aircraft Product Support, S–581.88, Linkping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1721; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–211–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises of reports indicating that the passenger oxygen system failed to operate correctly in an airplane after activation at a low cabin pressure due to the improper packing of the mask assemblies or incorrect installation of the oxygen generators or masks during manufacturing. The following failures were noted for some of the oxygen system components:

1. Lids to the dropout boxes did not open.
2. Oxygen mask hoses became disconnected from the generator outlet connections.
3. Oxygen masks were not released from the dropout boxes.

In addition, subsequent inspection of the passenger oxygen system on one Model SAAB 2000 series airplane revealed that two oxygen generators were released along with the oxygen masks, which indicates that the oxygen mask assembly was incorrectly packed in the dropout boxes.

Improper functioning of the passenger oxygen system, if not corrected, could result in an insufficient supply of oxygen being provided to airplane passengers in the event of rapid decompression of the airplane.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 2000–35–001, dated February 20, 1996, which describes procedures for performing a one-time inspection of the dropout boxes of the passenger oxygen system to detect discrepancies and determine whether the system operates properly; correcting any discrepancy found; and reworking or installing new components, if necessary.

The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive (SAD) 1–091, dated February 20, 1996, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the

Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require performing a one-time inspection of the dropout boxes of the passenger oxygen system to detect discrepancies and determine whether the system operates properly; correcting any discrepancy found; and reworking or installing new components, if necessary. These actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 3 Saab Model SAAB 2000 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $540, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

SAAB Aircraft AB: Docket 96–NM–211–AD.

Applicability: Model SAAB 2000 series airplanes, having serial numbers –003 through –039 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an insufficient supply of oxygen being provided to airplane passengers in the event of rapid decompression of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time inspection of the dropout boxes of the passenger oxygen system to detect discrepancies and determine whether the system operates properly, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–35–001, dated February 20, 1996.

(1) If the passenger oxygen system operates properly and no discrepancy is found in this system, no further action is required by this AD.

(2) If any discrepancy is found in the passenger oxygen system, prior to further flight, perform rework or install new components, as applicable, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 16, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–13468 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–213–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require the deactivation of certain floormat heaters in the cabin area. In addition, this proposal would provide for optional terminating action for that deactivation. This proposal is prompted by a report indicating that a flight attendant's floormat heater became overheated as a result of a short circuit between a floormat heater and a floor

panel that was made of conductive material; this condition resulted in smoke in the cabin area. The actions specified by the proposed AD are intended to prevent such short circuiting, which could cause overheating of the floormat heater and lead to smoke or fire in the airplane cabin.

DATES: Comments must be received by July 3, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1721; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–213–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises of a report indicating that during flight of a Model SAAB 2000 series airplane, a flight attendant's floormat heater in the cabin area overheated as a result of a short circuit between the heater and the floor. A possible cause was attributed to an object being placed inadvertently between a floormat heater and a floor panel that was made with a conductive carbon fiber skin. Such short circuiting, if not corrected, could cause overheating of the floormat heater, and lead to smoke or fire in the airplane cabin.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 2000–A25–022, Revision 01, dated January 23, 1996, which describes procedures for deactivating the flight attendant's floormat heater in the cabin area, either by disconnecting, isolating, and storing electrical cable HW71–20, or by removing fuse 17HW (1) from panel 306VU. Accomplishment of this deactivation will prevent a short circuit between the floormat heater and floor panel. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive (SAD) 1–086, dated January 19, 1996, in order to assure the continued airworthiness of these airplanes in Sweden.

In addition, Saab has issued Service Bulletin 2000–53–020, Revision 02, dated October 18, 1996, which describes procedures for replacing the floor panel under the flight attendant's seat in the fuselage with a new floor panel. These procedures include removing the existing floor covering in the entrance area, floormat heater, and floor panel; and installing a floormat heater, floor covering, and a new floor panel. The existing floor panel, which is made of conductive carbon fiber skin material, will be replaced by a new floor panel made of non-conductive material. Accomplishment of these actions will eliminate the need for deactivating the flight attendant's floormat heater, as described in Saab Service Bulletin 2000–A25–022. The LFV classified Saab Service Bulletin 2000–53–020 as optional.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require the deactivation of certain floormat heaters in the cabin area. In addition, this proposed AD would also provide for optional terminating action for that deactivation. These actions would be required to be accomplished in accordance with the Saab service bulletins described previously.

Cost Impact

The FAA estimates that 3 Saab Model SAAB 2000 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed deactivation, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $180, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, it would take approximately 2 work hours to accomplish it, at an

average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer to the operators at no cost. Based on these figures, the cost impact of this optional terminating action is estimated to be $120 per airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

SAAB Aircraft AB: Docket 96–NM–213–AD.

Applicability: Model SAAB 2000 series airplanes, serial numbers -004 through -039 inclusive, on which Saab Modification No. 5780, as specified in Saab Service Bulletin 2000–53–020, Revision 02, dated October 18, 1996, has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent short circuiting between the floormat heater and the floor panel, which could cause overheating of the floormat heater and lead to smoke or fire in the airplane cabin, accomplish the following:

(a) Within 14 days after the effective date of the AD, deactivate the flight attendant's floormat heater by either disconnecting electrical cable HW71–20 between the floormat heater and the floor panel, or by removing fuse 17HW (1) on panel 306VU, in accordance with Saab Service Bulletin 2000–A25–022, Revision 01, dated January 23, 1996.

(b) Installation of a floormat heater, floor covering, and a new floor panel made of non-conductive material, in accordance with Saab Service Bulletin 2000–53–020, Revision 02, dated October 18, 1996, constitutes terminating action for the deactivation required by paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 16, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–13466 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–13–U

RAILROAD RETIREMENT BOARD

20 CFR Parts 222 and 229

RIN 3220–AB28

Family Relationships; Social Security Overall Minimum Guarantee

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: In accord with amendments to the Social Security Act made by section 104 of Public Law 104–121, the Railroad Retirement Board hereby proposes to amend its regulations to eliminate the ''living with'' requirement as an alternative to actual dependency as a basis for eligibility for an annuity as the stepchild of a railroad employee, and to provide for termination of the inclusion of a stepchild in the computation of the social security overall minimum guarantee provision when the stepparent's marriage to the natural parent is terminated.

DATES: Comments must be received on or before July 21, 1997.

ADDRESSES: Secretary of the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, General Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751–4929, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 2(d)(4) of the Railroad Retirement Act provides in pertinent part that a child is deemed dependent if the conditions set forth in sections 202(d) (3), (4), and (9) of the Social Security Act are met. Since section 202(d)(4), as amended by Public Law 104–121, requires as a condition of dependency that the child have received one-half his or her support from the stepparent, and eliminates the alternative of the child having lived with the stepparent as a means of establishing dependency, this change in the definition of dependency in regard to stepchildren applies to benefits paid under the Railroad Retirement Act. Specifically, it will impact upon the entitlement of a spouse or survivor of an employee whose entitlement is based upon having a stepchild of the employee in care, or on an individual seeking a child's annuity as a stepchild of an employee. In these instances, actual dependency on the employee will have to be established for purposes of entitlement. The amendment is effective with respect to the benefits of individuals who become entitled to benefits for July 1996 and later.

The change will also affect the inclusion of auxiliary beneficiaries in the computation of the employee annuity under the Social Security overall minimum guarantee provision of the Railroad Retirement Act. The Social Security overall minimum guarantee provision guarantees that a railroad retirement annuitant will receive, in a combined benefits under the Railroad Retirement and Social Security Acts, not less than the amount which would have been paid to the employee and members of his family under the Social Security Act if the employee's railroad service had been creditable under that Act.

Public Law 104–121 also amends section 202(d)(1) of the Social Security Act to provide that a child's benefits based on the earnings record of a stepparent will terminate the month after the month in which the stepparent and the natural parent are divorced. The Railroad Retirement Act contains its own termination provisions: Section 5(c)(7) of that Act specifies when a child's annuity paid under the Railroad Retirement Act terminates. Therefore, this amendment to section 202(d)(1) does not directly apply to benefits paid under the Railroad Retirement Act. However, it will affect the inclusion of auxiliary beneficiaries in the computation of the Social Security overall minimum guarantee provision.

Consequently, under section 202(d)(1), as amended, if the marriage of a railroad employee stepparent and natural parent is terminated, then the stepchild would no longer be included in the computation under the Social Security overall minimum guarantee provision. Therefore, the Board is proposing to amend its regulations to provide that the inclusion of the stepchild in the computation under the Social Security overall minimum guarantee provision will terminate when the marriage of the stepparent and the natural parent is terminated.

The Office of Management and Budget has determined that this is not a significant regulatory action under Executive Order 12866. There are no new information collections associated with this rule.

List of Subjects in 20 CFR Parts 222 and 229

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, title 20, chapter II, parts 222 and 229 of the Code of Federal Regulations are proposed to be amended as follows:

PART 222—FAMILY RELATIONSHIPS

1. The authority citation for part 222 continues to read as follows:

Authority: 45 U.S.C. 231f.

§ 222.55 [Amended]

2. Section 222.55 is amended by removing the words ''is living with or''.

PART 229—SOCIAL SECURITY OVERALL MINIMUM GUARANTEE

3. The authority citation for part 229 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5).

4. Section 229.42 is amended by removing the period at the end of paragraph (f), by adding ''; or'' to the end of paragraph (f), and by adding a new paragraph (g) to read as follows:

§ 229.42 When a child can no longer be included in computing an annuity rate under the overall minimum.

* * * * *

(g) In the case of a stepchild of the employees, the month after the month in which the divorce between the stepparent and the natural parent becomes final.

Dated: May 9, 1997.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 97–13395 Filed 5–21–97; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–97–014]

RIN 2115–AE47

Drawbridge Operation Regulations; Manistee River, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the regulations governing the operations of the Maple Street bridge, mile 1.1, and the U.S. Route 31 bridge, mile 1.4, both over the Manistee River in Manistee, MI. This proposal would change the times that the bridges are required to open on signal between May 1 and October 31. The current hours of 6 a.m. to 10 p.m. would be revised to 7 a.m. to 11 p.m. This revision was requested for the convenience of recreational vessels using the facilities above the bridges.

DATES: Comments must be received on or before July 21, 1997.

ADDRESSES: Comments may be mailed or delivered to Commander (obr), Ninth Coast Guard District, 1240 E. Ninth St., Room 2019, Cleveland, OH 44199–2060, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 902–6084.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, at (216) 902–6084.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Scot Striffler, Project Manager, and Lieutenant Commander Kent Booher, Project Counsel, Ninth Coast Guard District.

Request for Comments

The Coast Guard encourages interested persons to submit written data, or arguments for or against this rule. Persons submitting comments should include their name, address, identify this rulemaking (CGD09–97–014), the specific section of this rule to which each comment applies, and the reasons(s) for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½″ x 11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons wanting acknowledgement of receipt of comments should enclose a stamped self-addressed post card or envelope. Persons may submit comment by writing to the Commander (obr), Ninth Coast Guard District listed under **ADDRESSES**.

Background and Purpose

The City of Manistee, MI, on behalf of the marina owners in Manistee, requested the Coast Guard approve a change to the operating regulations pertaining to the Maple Street bridge and U.S. Route 31 bridge over the Manistee River. The City of Manistee owns and operates the Maple Street bridge. The Michigan Department of Transportation (MDOT) owns the U.S. Route 31 bridge and contracts the City of Manistee to operate the bridge. The marina owners and operators on Manistee Lake requested the hours during which the bridges open on signal be revised to allow longer evening sailing times for the vessels using the marinas above the bridges.

The City of Manistee conducted meetings with marina owners, along with a written survey of boat owners using these facilities, in January-

February 1997 to ascertain the most desirable time of operation for the bridges. The meetings and survey concluded that the idea hours of operation would be from 7 a.m. to 11 p.m., between May 1 and October 31 each year.

The City of Manistee and MDOT have stated no objections to this change since the total number of operational hours remain the same and there are no additional costs involved for the owners/operators of the bridges. Coast Guard operations on Manistee Lake will not be affected by this revision. The three commercial shipping companies who transit the bridges have stated no objections to this change.

Commander, Ninth Coast Guard District, approved a temporary deviation from the regulations for the bridges from May 31, 1997 to August 31, 1997. The temporary deviation, published elsewhere in today's **Federal Register**, was authorized to test the proposed schedule before making a permanent change to the regulations.

Under the proposed schedule, from May 1 to October 31, the bridges would only be required to open on signal between 7 a.m. and 11 p.m. Between 11 p.m. and 7 a.m., the bridges would open if at least a 2-hour advance notice is provided by vessels intending to transit the draws. The operations of the bridges between November 1 and April 30 would remain the same.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This action was initiated by the City of Manistee, on behalf of the marina operators on Manistee Lake, to increase access to recreational facilities located above the bridge and to enhance the economic potential of commerce in the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Because this rulemaking was initiated on behalf of the marina operators on Manistee Lake in order to increase use of recreational facilities, thereby enhancing potential economic commerce, no adverse economic impact is anticipated on a substantial number of small businesses. Any comments submitted in response to this finding will be evaluated under the criteria described earlier in the preamble for comments.

Collection of Information

This rule 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 rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, 33 CFR part 117 is revised as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows.

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.637 is amended by revising paragraph (a)(1) to read as follows:

§ 117.637 Manistee River.

(a) * * *

(1) From May 1 through October 31 from 7 a.m. to 11 p.m., the bridges shall open on signal. From 11 p.m. to 7 a.m., the bridges need not open unless notice is given at least two hours in advance of a vessel's time of intended passage through the draws.

* * * * *

Dated: May 7, 1997.

G.F. Woolever,

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

[FR Doc. 97–13510 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–5828–2]

Announcement of Stakeholders Meeting on National Primary Drinking Water Regulation for Radon-222

AGENCY: Environmental Protection Agency.

ACTION: Notice of stakeholders meeting.

SUMMARY: The U.S. Environmental Protection Agency will be holding a one-day public meeting on June 26, 1997. The purpose of this meeting is to present information on EPA plans for activities to develop a proposed National Primary Drinking Water Regulation (NPDWR) for radon-222, and solicit public input on major technical and implementation issues, and on preferred approaches for continued public involvement. This meeting is a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water Program. These meetings were initiated as part of the Drinking Water Program Redirection efforts to help refocus EPA's drinking water priorities and to support strong, flexible partnerships among EPA, States, local governments, and the public. At the upcoming meeting, EPA is seeking input from state drinking water and radon programs, the regulated community (public water systems), public health and safety organizations, environmental and public interest groups, and other stakeholders on a number of issues related to developing the NPDWR for radon. EPA encourages the full participation of stakeholders throughout this process.

DATES: The stakeholder meeting on the NPDWR for radon will be held on June 26, 1997 from 9:00 a.m. to 4:30 p.m.

ADDRESSES: To register for the meeting, please contact the Safe Drinking Water Hotline at 1–800–426–4791 by June 12,

1997. Those registered for the meeting will receive background materials prior to the meeting. Members of the public who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline as well. Members of the public who cannot participate via conference call or in person may submit comments in writing by July 10, 1997 to Sylvia Malm, at the U.S. Environmental Protection Agency, 401 M St., SW (4607), Washington, DC, 20460. The meeting will be held in Washington, DC. The address of the meeting site will be included with the background materials.

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to developing the NPDWR for radon and other EPA activities under the Safe Drinking Water Act, contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on radon in indoor air, contact the National Safety Council's National Radon Hotline at 1–800–SOS–RADON.

SUPPLEMENTARY INFORMATION:

A. Background

On July 18, 1991 (56 FR 33050), EPA proposed a Maximum Contaminant Level Goal (MCLG) and National Primary Drinking Water Regulation (NPDWR) for radon and other radionuclides in public water supplies. EPA proposed to regulate radon at 300 pCi/L. Commenters on the 1991 proposed NPDWR for radon raised several concerns, including cost of implementation, especially for small systems, and the larger risk to public health from radon in indoor air from soil under buildings.

On August 6, 1996, Congress passed amendments to the Safe Drinking Water Act (SDWA), which establishes a new charter for the nation's public water systems, States, and EPA in protecting the safety of drinking water. The amendments [§ 1412(b)(13)] direct EPA to develop an MCLG and NPDWR for radon. EPA is required to (1) Withdraw the 1991 proposed MCLG and NPDWR for radon-222; (2) arrange for the National Academy of Sciences (NAS) to conduct an independent risk assessment for radon in drinking water and an independent assessment of risk reduction benefits from various mitigation measures to reduce radon in indoor air; (3) publish a radon health risk reduction and cost analysis for possible radon Maximum Contaminant Levels (MCLs) for public comment by February, 1999; (4) propose an MCLG and NPDWR for radon by August, 1999; (5) publish a final MCLG and NPDWR for radon by August, 2000.

If the MCL is ''more stringent than necessary to reduce the contribution to radon in indoor air from drinking water to a concentration that is equivalent to the national average concentration of radon in outdoor air,'' EPA is also required to promulgate an alternative MCL and publish guidelines for state multimedia mitigation programs to mitigate radon levels in air. The alternative MCL would ''reduce the contribution from radon in water to radon in indoor air to a concentration that is equivalent to the national average concentration of radon in air.'' States may develop and submit to EPA for approval a multimedia mitigation program to mitigate radon levels in indoor air. EPA shall approve State multimedia mitigation programs if they are expected to achieve equivalent or greater health risk reduction benefits than compliance with the MCL. If EPA approves a State multimedia mitigation program, public water supply systems within the State may comply with the alternative MCL. If EPA does not approve a State program, or the State does not propose a program, public water supply systems may propose multimedia mitigation programs to EPA, under the same procedures outlined for States.

B. Request for Stakeholder Involvement

EPA is committed to proposing a timely NPDWR for radon that incorporates the best available science, treatment technologies, occurrence data, cost/benefit analyses, and stakeholder input on technical and implementation issues. EPA has evaluated comments on the 1991 proposed NPDWR for radon and will be considering those comments in developing the regulation.

The meeting will cover a broad range of issues including: (1) Radon in drinking water MCL development (treatment technologies, occurrence, analytical methods); (2) multimedia mitigation program; and (3) stakeholder involvement processes. Background materials on radon in drinking water issues will be sent to all registered participants in advance of the meeting. Issues for discussion and stakeholder input will be based on the materials provided and include (but may not be limited to) the following:

(1) Any new information or data;

(2) Issues and concerns related to rule development;

(3) Issues and concerns related to implementing a multimedia mitigation program from the perspective of your state, water systems, public health and safety organizations, environmental and public interest groups, and the public; and

(4) Recommendations on the most beneficial points in the process for stakeholder input and preferred approaches for stakeholder input.

EPA has announced this public meeting to hear the views of stakeholders on EPA's plans for activities to develop a NPDWR for radon. The public is invited to provide comments on the issues listed above and other issues related to the radon in drinking water regulation during the June 26, 1997 meeting or in writing by July 10, 1997.

Dated: May 15, 1997.

Richard Kuhlman,

Acting Director, Office of Ground Water and Drinking Water, Environmental Protection Agency.

[FR Doc. 97–13323 Filed 5–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–5828–9]

List of Regulated Substances and Thresholds for Accidental Release Prevention; Proposed Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing modifications to the list of regulated substances and threshold quantities the accidental release prevention regulations authorized by section 112(r) of the Clean Air Act as amended. EPA is proposing to vacate the listing and related threshold for hydrochloric acid solutions with less than 37% concentrations of hydrogen chloride. The current listing and threshold for all other regulated substances, including hydrochloric acid solutions with 37% or greater concentrations and the listing and threshold for anhydrous hydrogen chloride, are unaffected by today's proposed amendment. Today's action implements, in part, a settlement agreement between EPA and the General Electric Company (GE) to resolve GE's petition for review of the rulemaking listing regulated substances and establishing thresholds under the accidental release prevention regulations.

DATES: Comments must be submitted on or before June 23, 1997, unless a hearing

is requested by June 2, 1997. If a hearing is requested, written comments must be received by July 7, 1997.

Public Hearing. Anyone requesting a public hearing must contact EPA no later than June 2, 1997. If a hearing is held, it will take place on June 6, 1997 at 9:30 a.m.

ADDRESSES: Comments should be mailed or submitted to: Environmental Protection Agency, Air Docket (6102), Attn: Docket No. A–97–28, Waterside Mall, 401 M St., SW, Washington, DC 20460. Comments must be submitted in duplicate. Comments may be submitted on disk in WordPerfect or Word formats. If a public hearing is held, written testimony should be submitted in duplicate at the time of the hearing.

Public Hearing. If a public hearing is held, it will be held at Waterside Mall, 401 M St., SW, Washington, DC 20460, in the Conference Center in a room to be designated. Persons interested in attending the hearing or wishing to present oral testimony should notify by telephone Dorothy McManus (see **FOR FURTHER INFORMATION CONTACT**).

Docket. The docket for this rulemaking is A–97–28. This proposed rule would amend a final rule, the docket for which is A–91–74. The docket may be inspected between 8 am and 5:30 pm, Monday through Friday at EPA's Air Docket, Room M1500, Waterside Mall, 401 M St., SW, Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Prior to June 16, 1997, contact Dorothy McManus, Program Analyst, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, MC 5104, 401 M St., SW, Washington, DC 20460, (202) 260–8606. After June 16, 1997, contact Vanessa Rodriguez, Chemical Engineer, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, MC 5104, 401 M St., SW, Washington, DC 20460, (202) 260–7913.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this action include the following types of facilities if the facility has more than the 15,000 pound threshold quantity of hydrochloric acid solutions with concentrations of less than 37% hydrogen chloride.

Category	Example of regulated entities
Chemical manufacturers.	Industrial inorganics.
Petrochemical	Plastics and resins.
Other manufacturers.	Pulp and paper mills, primary metal production, fabricated metal products, electronic and other electric equipment, transportation equipment, industrial machinery and equipment, food processors.
Wholesalers ..	Chemical distributors.
Federal sources.	Defense and energy installations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could be affected. To determine whether your facility is affected by this action, you should carefully examine today's notice. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The following outline is provided to aid in reading this preamble to the proposed rule:

Table of Contents

I. Introduction and Background
A. Statutory Authority
B. Regulatory History
C. List Rule Litigation
II. Discussion of Proposed Modifications
A. Rationale for Vacating 30% to 37% Solutions
B. Potential Future Actions Affecting Hydrochloric Acid
III. Discussion of the Proposed Rule
IV. Required Analyses
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act

I. Introduction and Background

A. Statutory Authority

This notice of proposed rulemaking (NPRM) is being issued under sections 112(r) and 301 of the Clean Air Act (Act) as amended.

B. Regulatory History

The Clean Air Act (CAA or Act), section 112(r), contains requirements related to prevention of accidental releases. The goal of the accidental release provisions is to prevent accidental releases and minimize the consequences of releases by focusing on those chemicals and operations that pose the greatest risk. The CAA requires EPA to promulgate an initial list of at least 100 substances (''regulated substances'') that, in the event of an accidental release, are known to cause or may be reasonably expected to cause death, injury, or serious adverse effects to human health and the environment. The Act identifies 16 substances to be included in the initial list. Factors required to be considered in listing substances are the severity of acute adverse health effects associated with accidental releases of the substance, the likelihood of accidental releases of the substance, and the potential magnitude of human exposure to accidental releases of the substance. The CAA also requires EPA to establish a threshold quantity for each chemical at the time of listing. In developing these thresholds, factors required to be considered include toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which is known to cause or can be reasonably anticipated to cause death, injury, or serious adverse effects in case of a release. Stationary sources that have more than a threshold quantity of a regulated substance are subject to accident prevention regulations promulgated under CAA section 112(r)(7), including the requirement to develop risk management plans.

On January 31, 1994, EPA promulgated the list of regulated substances and thresholds that identify stationary sources subject to the accidental release prevention regulations (59 FR 4478) (the ''List Rule''). EPA subsequently promulgated a rule requiring owners and operators of these stationary sources to develop programs addressing accidental releases and to make publicly available risk management plans (''RMPs'') summarizing these programs. (61 FR 31668, June 20, 1996) (the ''RMP Rule''). On April 15, 1996, EPA proposed amendments to the List Rule (61 FR 16598) and on June 20, 1996, stayed certain provisions of the list and threshold regulations affected by the proposed amendments (61 FR 31730). For further information on these regulations, section 112(r), and related statutory provisions, see these notices. These rules can be found in 40 CFR part 68, ''Chemical Accident Prevention Provisions,'' and collectively are referred to as the accidental release prevention regulations.

In the List Rule, EPA promulgated a list that includes 77 acutely toxic substances, 63 flammable gases and volatile flammable liquids, and Division 1.1 high explosive substances as listed by the United States Department of Transportation (DOT) in 49 CFR 172.101. The final rule established

threshold quantities for toxic substances ranging from 500 to 20,000 pounds, as well as thresholds for regulated flammable substances (10,000 pounds) and explosive substances (5,000 pounds). The rule also specified the requirements for any petitions to the Agency requesting to add substances to, or delete substances from, the list.

In considering the statutory criteria for listing regulated substances discussed above, EPA selected commercially produced acutely toxic and volatile substances mostly from the list of extremely hazardous substances (EHSs) under section 302 of the Emergency Planning and Community Right-to-Know Act (EPCRA). EPA chose volatile substances because they are more likely to become airborne and impact the public. EPA also considered the accident history of substances. Because vapor cloud explosions and blast waves from detonations of high explosives have caused injuries to the public and damage to the environment, EPA also included highly flammable gases and liquids and high explosives on the list.

C. List Rule Litigation

The American Petroleum Institute (API), the Institute of Makers of Explosives (IME), and the General Electric Company (GE) filed petitions for judicial review of the List Rule (American Petroleum Institute v. EPA, No. 94–1273 (D.C. Cir.) and consolidated cases). The API and IME petitions for review focused primarily on issues related to the regulation of flammable and explosive substances. EPA, API, and IME signed settlement agreements in March 1996 that, when fully implemented, will resolve these two cases. Consistent with these settlements, EPA proposed amendments to the List Rule on April 15, 1996 (61 FR 16598). Furthermore, on June 20, 1996, EPA promulgated a stay of certain provisions of the List Rule that were affected by the proposed amendments (61 FR 31730). The effect of the stay is to provide sources affected by the proposed amendments the same amount of time to meet the requirements of the accident prevention regulations as other sources not affected by the proposal in the event that EPA ultimately decides not to promulgate the amendments as proposed. EPA anticipates final action on the API/IME related amendments by December 20, 1997, which is the date on which the stay is scheduled to expire.

The GE petition for review raised issues regarding EPA's listing criteria under the List Rule, the listing of certain substances in the List Rule, the setting of threshold quantities for certain substances in particular and all regulated toxic substances generally, and the petition process for adding and deleting regulated substances to the list. GE identified as ''[t]he crux of the dispute * * * the legality and propriety of including solutions of hydrochloric acid at 30% or greater on the list of regulated substances,'' and challenged the adequacy of the administrative record support for both the listing and the 15,000 pound threshold for such solutions (see GE Status Report of January 27, 1997, page 2, and the settlement agreement between GE and EPA, page 1, both of which are in the docket for today's proposed rule). While neither GE nor EPA conceded the correctness of the opposing party's position on any of the issues raised by GE, both parties recognized that there were substantial and material issues regarding the support in the administrative record for the listing of concentrations of hydrochloric acid up to 37% hydrogen chloride. Recognizing that the public's interest would best be served by settlement of all issues raised in this litigation, GE and EPA agreed to a settlement on April 7, 1997. Under the terms of the settlement agreement, EPA would propose to vacate provisions of the accidental release prevention regulations that specifically address hydrochloric acid solutions with less than 37% hydrogen chloride. On April 24, 1997, EPA made available for public comment under CAA section 113(g) the proposed settlement agreement with GE (62 FR 20007).

II. Discussion of Proposed Modifications

A. Rationale for Vacating 30% to 37% Solutions

In the above-described litigation, GE raised substantial concerns regarding whether the administrative record for the List Rule supports the listing of Hydrochloric Acid solutions at 30% hydrogen chloride concentrations. Among other issues, GE has questioned whether the listing criteria EPA used to list such solutions appropriately characterize these solutions' potential magnitude of human exposure and has challenged the methodology used to assign such solutions a 15,000 pound threshold. As discussed below, EPA believes that the concerns discussed above warrant vacating the listing of hydrochloric acid solutions of less than 37% (i.e., from 30% inclusive, up to but not including 37%).

It is unlikely that the GE challenge to hydrochloric acid and all other chemicals and thresholds established in the List Rule would be resolved much sooner than 1998 if the parties were to brief and litigate this case. As with any litigation, there is uncertainty about the outcome of this case. In the event that the litigation proceeded and the Court required EPA to conduct further rulemaking concerning aspects of the List Rule, additional time would lapse before EPA could complete such actions. In that situation, the RMP Rule's June 21, 1999, compliance date potentially could be impacted not only for the solutions proposed to be delisted today, but also for other regulated substances that are not affected by today's proposal.

Today's action addresses the essential element of the dispute between EPA and GE while eliminating the collateral uncertainty that would exist about the regulatory status of the remaining chemicals if the litigation proceeded. EPA has vigorously advocated responsible accident prevention efforts by industry even before enactment of section 112(r). The Agency is concerned that prolonging this dispute may encourage owners and operators of sources who are solely concerned about regulatory compliance to defer engaging in responsible accident prevention activities. By implementing the settlement agreement with GE and by implementing the settlement agreements reached in the other two challenges to the List Rule, EPA will be able to retain on the list of regulated substances nearly all of the chemicals originally listed and eliminate uncertainty about their regulatory status.

EPA believes today's proposed rule is protective of the public health in several respects. First, the proposed rule would allow the listing of hydrochloric acid solutions to remain in effect for solutions with concentrations of 37% or greater. Relative to the solutions proposed to be vacated, the solutions that will remain listed have a higher partial pressure of hydrogen chloride, which may indicate a greater capacity to release hydrogen chloride and have hydrogen chloride affect offsite communities. Second, the types of solutions that remain regulated are prevalent in commerce. Third, as has been explained by EPA in rulemakings and other interpretations, the presence or absence of a chemical on the list of regulated substances in no way affects the applicability of section 112(r)(1), the general duty clause, to substances that are extremely hazardous in fact (see, for example, 59 FR at 4481; and *Risk Management Program Rule: Summary and Response to Comments,* section 32, Docket A–91–73, entry IX–C–01). The general duty clause creates a duty for the owner or operator of a stationary

source ''in the same manner and to the same extent as'' the general duty provision under the Occupational Safety and Health Act ''to identify hazards which may result from [accidental] releases using appropriate hazard assessment techniques, to design and maintain a safe facility, and to minimize the consequences of accidental releases which do occur'' (CAA section 112(r)(1)). The general duty clause provides an important level of protection of the public health for substances that are extremely hazardous in fact regardless of whether they are listed.

Finally, EPA wishes to clarify that this proposed rule would not affect in any way the listing of anhydrous hydrogen chloride. Anhydrous hydrogen chloride would retain its 5000 pound threshold. Threshold determination provisions for regulated toxic substances would apply to anhydrous hydrogen chloride. Anhydrous mixtures of Hydrogen Chloride would be subject to the mixture provisions for regulated toxic substances. Aqueous mixtures of hydrochloric acid would be affected to the extent that the minimum concentration cutoff would be revised.

Based on the reasons discussed above, EPA is proposing to vacate the listing in part 68 of hydrochloric acid solutions at concentrations of less than 37% (from 30% up to 37%) hydrogen chloride. Solutions of 37% or greater would not be affected by today's proposal and remain on the list. In addition, EPA is proposing to vacate other provisions of the accidental release prevention regulations insofar as they apply to hydrochloric acid solutions at concentrations less than 37% hydrogen chloride. For example, the reference to ''hydrochloric acid (conc 30% or greater)'' in the toxic endpoint table for 40 CFR part 68 would be revised to refer to concentrations of 37% or greater.

EPA recognizes that there will be uncertainty for owners and operators of stationary sources as to the regulatory status of 30% to 37% solutions until EPA takes final action on today's proposal. Such uncertainty is likely to impact compliance planning for processes subject to the accidental release prevention regulations. Therefore, EPA is proposing that if EPA does not issue a final rule vacating the listing of hydrochloric acid solutions with less than 37% concentrations and related part 68 provisions, EPA will extend the June 21, 1999 RMP Rule compliance deadline for such solutions by no less than the amount of time that elapses from April 7, 1997, to 180 days following the publication of a final action that declines to vacate the listing of hydrochloric acid solutions with less than 37% concentrations and related portions of part 68. For example, if such a notice were published on September 4, 1997, which is 150 days after April 7, 1997, then the compliance deadline applicable to 30% to 37% solutions would be extended 330 days from June 21, 1999, to May 16, 2000.

B. Potential Future Actions Affecting Hydrochloric Acid

EPA notes that it is required by statute to review its list at least every five years (section 112(r)(3)). Therefore, EPA will need to address the appropriate concentration for the hydrochloric acid listing no later than the time it performs this review. A future rulemaking will provide an opportunity to more fully explain the basis for the listing, including any issues peculiar to hydrochloric acid solutions. For example, EPA anticipates it would address matters such as any new accident history data involving solutions in the 30% to 37% range as well as any substance-specific technical issues regarding such a listing.

EPA is not at this time reopening the rulemaking record on the listing of hydrochloric acid solutions within the range of 30% to 37%. Any subsequent action to list solutions at concentrations within the 30% to 37% range will be taken only after a new notice of proposed rulemaking and an opportunity for interested parties to comment. In the event that EPA proceeds to relist, stationary sources would have no less than three years to comply with the RMP Rule following promulgation of a final rule listing hydrochloric acid solutions at concentrations within this range.

III. Discussion of the Proposed Rule

EPA is proposing to amend several sections of part 68 of title 40 of the Code of Federal Regulations.

In § 68.130, tables 1 and 2, the listing for Hydrochloric Acid would be revised to read ''Hydrochloric Acid (conc 37% or greater).'' In addition, note ''d'' from Table 1 would be added to Table 2, from which it was inadvertently omitted when the list rule was promulgated. Note ''d'' would apply to only hydrochloric acid with concentrations 37% or greater when this action is finalized.

In part 68, Appendix A, the table of toxic endpoints, the entry for hydrochloric acid would be revised to read ''Hydrochloric Acid (conc 37% or greater).''

IV. Required Analyses

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must judge whether the regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and, therefore, is not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because it would, if adopted as a final rule, reduce the range of hydrochloric acid solutions listed under part 68 and thus reduce the number of stationary sources subject to part 68. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This proposed rule does not include any information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's proposed rule, if adopted, would reduce the number of sources subject to part 68. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Chemical accident prevention, Extremely hazardous substances, Incorporation by reference, Intergovernmental relations, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 16, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, subchapter C, part 68 of the Code of Federal Regulations is proposed to be amended as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

1. The authority citation for part 68 continues to read as follows:

Authority: 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

§ 68.130 Tables 1 and 2 [Amended]

2. In § 68.130 List of substances, Table 1 is proposed to be amended by revising the listing in the column ''Chemical name'' from ''Hydrochloric acid (conc 30% or greater)'' to ''Hydrochloric acid (conc 37% or greater).''

3. In § 68.130 List of substances, Table 2 is proposed to be amended by revising the listing in the column ''Chemical name'' from ''Hydrochloric acid (conc 30% or greater)'' to ''Hydrochloric acid (conc 37% or greater),'' and by adding a note ''d'' between note ''c'' and ''e'' at the end of the table to read as follows:

d Toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents.

Appendix A of Part 68 [Amended]

4. Appendix A of Part 68 is proposed to be amended by revising the listing in the column ''Chemical name'' from ''Hydrochloric acid (conc 30% or greater)'' ''Hydrochloric acid (conc 37% or greater).''

[FR Doc. 97–13483 Filed 5–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–5829–1]

Notification of Completeness of the Department of Energy's Compliance Certification Application for the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; notification of completeness of compliance certification application.

SUMMARY: The Environmental Protection Agency (EPA) has determined that the Department of Energy's (DOE) Compliance Certification Application (CCA) for the Waste Isolation Pilot Plant (WIPP) is complete. The Administrator of the EPA provided written notice of the completeness decision to the Secretary of Energy on May 16, 1997. The text of the letter is contained in the **SUPPLEMENTARY INFORMATION.**

EPA has determined that the CCA is complete in accordance with 40 CFR Part 194, ''Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with the 40 CFR Part 191 Disposal Regulations'' (Compliance Certification Criteria). The completeness determination is an interim preliminary administrative step in the certification rulemaking for WIPP that is required by regulation, and does not imply in any way that the CCA demonstrates compliance with the Compliance Criteria and/or the Disposal Regulations.

ADDRESSES: Written comments should be submitted, in duplicate, to: Docket No. A–93–02, Air Docket, Room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460.

FOR FURTHER INFORMATION CONTACT: Mary Kruger or Scott Monroe; telephone number: (202)233–9310; address: Radiation Protection Division, Mail Code 6602J, U.S. Environmental Protection Agency, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Background

The Waste Isolation Pilot Plant (WIPP) was authorized in 1980, under section 213 of the Department of Energy (DOE) National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Pub. L. 96–164, 93 Stat. 1259, 1265). The WIPP is being constructed by the DOE near Carlsbad, New Mexico, as a potential repository for the safe disposal of transuranic radioactive waste.

The 1992 WIPP Land Withdrawal Act, as amended (Pub. L. 102–579) requires EPA to evaluate and certify whether the WIPP will comply with subparts B and C of 40 CFR part 191—known as the ''disposal regulations''—and to issue or deny a certification of compliance. The Department of Energy is required to submit an application to EPA that will be the basis of EPA's evaluation of whether a certification of the WIPP's compliance with the disposal

regulations should be issued. The disposal regulations limit releases of radioactive materials from disposal systems for radioactive waste, and require implementation of measures to provide confidence for compliance with the radiation release limits. Additionally, the disposal regulations limit radiation doses to members of the public, and protect ground water resources by establishing maximum concentrations for radionuclides in ground water. For more information about 40 CFR part 191, refer to **Federal Register** notices published in 1985 (50 FR 38066–38089, Sep. 19, 1985) and 1993 (58 FR 66398–66416, Dec. 20, 1993).

The WIPP Land Withdrawal Act also calls for EPA to establish criteria by which to judge whether the WIPP will comply with the disposal regulations. EPA published the Compliance Certification Criteria (40 CFR Part 194) on February 9, 1996. See 61 FR 5224. Thus, EPA will determine whether the WIPP complies with the Part 191 disposal regulations by applying the Compliance Certification Criteria in its evaluation of the CCA. For more information about 40 CFR part 194, refer to **Federal Register** notices published in 1995 (60 FR 5766–5791, Jan. 30, 1995), and 1996 (61 FR 5224–5245, Feb. 9, 1996).

Section 8(d)(2) of the WIPP Land Withdrawal Act, as amended, requires EPA to determine whether the WIPP complies with the disposal regulations by rulemaking pursuant to the Administrative Procedure Act (5 U.S.C. 553) within 1 year of receipt of the application. The Compliance Certification Criteria at 40 C.F.R. 194.11 provide that EPA's evaluation for certification pursuant to Section 8(d) shall not begin until the Administrator has informed the Secretary in writing that EPA has received a complete application.

With today's document, the Agency announces that it has determined that the compliance certification application (CCA) for the WIPP is sufficiently complete to allow EPA to conduct the required technical evaluation. This determination is solely an administrative measure and does not reflect any conclusion regarding the WIPP's compliance with the disposal regulations.

DOE submitted the CCA to EPA on October 29, 1996. Pursuant to Section 8(d)(1) of the WIPP Land Withdrawal Act, as amended, EPA identified additional information necessary for the CCA to constitute a complete application in a letter transmitted to DOE on December 19, 1996. DOE submitted the requested information with letters dated January 17, January 24, February 7, February 14, and February 26, 1997.

EPA announced its receipt of the CCA in an Advance Notice of Proposed Rulemaking (ANPRM) for the compliance determination published in the **Federal Register** on November 15, 1996 (61 FR 58499). A copy of the submitted application, as well as the Agency's comments on draft versions, is available for inspection in EPA's public dockets, as described below. In addition, all correspondence between EPA and DOE regarding the completeness of the compliance application is available in the public dockets.

EPA received numerous public comments regarding the completeness and technical sufficiency of the CCA during both a 120-day public comment period provided for in the ANPRM (November 15, 1996, to March 17, 1997) and a series of public hearings held in New Mexico. All significant public comments received during the first public comment period will be considered and responded to as EPA develops the proposed certification decision on whether the WIPP complies with the disposal regulations. In response to public requests for an additional opportunity to comment on the complete CCA, EPA will accept and consider public comments submitted to the docket after publication of this notice.

EPA will determine whether to certify that the WIPP complies with the disposal regulations after several additional regulatory steps, including technical evaluation of the application, issuance of a notice of proposed rulemaking in the **Federal Register**, a second 120-day public comment period, a second set of public hearings in New Mexico, analysis of public comments, and issuance of a final notice in the **Federal Register**. A ''response to comments'' document that summarizes and addresses significant comments will accompany the final notice and will be made available in the public dockets. Comments must be received within the time frame specified by the Notice of Proposed Rulemaking. Any contacts between EPA and any party occurring after the close of the comment period will be strictly governed in accordance with the Administrator's Statement of Policy on *ex parte* contacts in rulemaking and the transparency requirements of Executive Order 12866.

Text of Letter

Dear Mr. Secretary: Pursuant to Section 8(d) of the Waste Isolation Pilot Plant (WIPP) Land Withdrawal Act, as amended,(the Act, or the LWA), and in accordance with the WIPP Compliance Criteria at 40 CFR § 194.11, I hereby notify you that the U.S. Environmental Protection Agency (EPA) has determined that the U.S. Department of Energy's (DOE) Compliance Certification Application (CCA) for WIPP is complete. This completeness determination is a preliminary, interim determination required under the WIPP Compliance Criteria, which implement the Agency's Final Radioactive Waste Disposal Regulations at Subparts B and C of 40 CFR Part 191 (Disposal Regulations). While the completeness determination initiates the one-year evaluation period provided for in Section 8(d)(2) of the LWA, it does not have any generally applicable legal effect. Further, this determination does not imply or indicate that the CCA demonstrates compliance with the Compliance Criteria and/or the Disposal Regulations.

Section 8(d)(2) of the LWA requires EPA to certify whether WIPP complies with the Agency's Disposal Regulations. Section 8(d)(4) of the Act requires that EPA only perform such certification after DOE has submitted a ''full'' (or complete) application. Upon receipt of the CCA on October 29, 1996, EPA immediately commenced its review to determine whether the CCA was complete. Shortly thereafter, the Agency began to identify areas of the CCA that required supplementary information and analyses. In addition, EPA received numerous public comments on the CCA that identified areas of concern.

EPA identified completeness concerns in a December 19, 1996 letter from Mary Nichols, Assistant Administrator for the Office of Air and Radiation, to Alvin Alm, Assistant Secretary for Environmental Management. DOE responded with additional information, records packages, and clarifications, as necessary.

To the extent possible, the Agency has also been conducting a preliminary technical sufficiency review, and has provided the Department with relevant technical comments on an ongoing basis. EPA will continue to conduct its technical review of the CCA. The Agency will issue its proposed compliance certification decision, in accordance with 40 CFR Part 194 and Part 191 Subparts B and C, after it has thoroughly evaluated the complete CCA and considered relevant public comments. Thank you for your cooperation during our review process. Should you have questions regarding this request, please contact Ramona Trovato at (202) 233–9320.

Sincerely,

[signed]

Carol M. Browner,

Administrator.

Additional Docket Information

The CCA consists of the application received by EPA on October 29, 1996, plus all relevant supplementary information sent by DOE after that date. Documents that constitute the CCA are filed in Category II–G of Docket No. A–93–02. Correspondence between DOE

and EPA in reference to the CCA is filed in Category II–I.

EPA maintains the following public information dockets: (1) Docket No. A–93–02, located in room 1500 (first floor in Waterside Mall near the Washington Information Center), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460 (open from 8:00 a.m. to 4:00 p.m. on weekdays); (2) EPA's docket in the Government Publications Department of the Zimmerman Library of the University of New Mexico located in Albuquerque, New Mexico, (open from 8:00 a.m. to 9:00 p.m. on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); (3) EPA's docket in the Fogelson Library of the College of Santa Fe in Santa Fe, New Mexico, located at 1600 St. Michaels Drive (open from 8:00 a.m. to 12:00 midnight on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, 1:00 p.m. to 9:00 p.m. on Sunday); and (4) EPA's docket in the Municipal Library of Carlsbad, New Mexico, located at 101 S. Halegueno (open from 10:00 a.m. to 9:00 p.m. on Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday and Saturday, and 1:00 p.m. to 5:00 p.m. on Sunday). As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying docket materials.

Dated: May 16, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–13482 Filed 5–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5827–9]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Tri-State Plating Superfund Site from the National Priorities List; request for comments.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Tri-State Plating Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA, because it has been determined that all Fund-financed responses under CERCLA have been implemented and U.S. EPA, in consultation with the State of Indiana, has determined that no further response is appropriate. Moreover, U.S. EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before June 23, 1997.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information repository located at: Bartholomew County Health Department, 440 3rd St., Suite 303, Columbus, IN 47201–6798. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Gladys Beard (SR–6J), Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Dave Novak (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–9840.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Tri-State Plating Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day comment period. The public is asked to

comment on U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the U.S. EPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If U.S. EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The Tri-State Plating site is located at 1716 Keller Avenue in a residential and small business neighborhood in Columbus, Indiana. Residences lie to the north, east, and the west of the site, and a small industrial business lies to the south. Prior to the decontamination and demolition of all on-site structures in 1989, an electroplating process building and a storage building were located on the site. The Tri-State Plating Property encompasses an area of approximately 130 feet by 120 feet. The site is located 800 feet southwest of the City of Columbus secondary municipal well field and 800 feet west of Haw Creek. The area surrounding the site is relatively flat, with steeper slopes to the east of the site along Haw Creek.

Metal-plating operations occurred at the site for 40 years prior to Tri-State Plating under Hull Industries and Quality Plating Service Company, Inc. The facility was purchased by Tri-State Plating, Inc. on April 13, 1981. Plating operations were performed by this company from December 1981 until the facility closed in May 1984.

Environmental problems at the site were brought to the attention of authorities, on January 25, 1983, when the Bartholomew County Health Department (BCHD) was summoned to the site following the death of six birds that reportedly drank from a pool of solutions dumped on site. A sample of the liquid was collected and elevated concentrations of cadmium, cyanide, chromium, manganese and lead were detected. Subsequent investigations by BCHD and the Indiana State Board of Health (ISBH) conducted in February, March and April 1983 revealed that on-site surface soils contained extremely high levels of cadmium, chromium, lead, nickel and cyanide when compared to off-site samples from surrounding properties. These investigations also discovered elevated levels of chromium in water from the Arvin Industries well located 200 feet south of the site, although cyanide and other sites contaminants were not detected. Also during this period, sampling and analysis of effluent leaving the Tri-State Plating facility, conducted by Columbus Utilities, verified that plant wastes were being discharged to city sewers.

In May 1984, following several discharges that exceeded the specified limits, illegal dumping of wastes on the ground surface at the site, failure to install a waste treatment system, and one severe spill that interrupted the biological system at the city of Columbus Waste Water Treatment Facility, sewers from Tri-State Plating were blocked and the water supply was cut off. The Tri-State Plating site has been abandoned since this time.

On September 18, 1985, the Site was proposed for the National Priorities List (NPL), (50 FR 3764). The Site was finalized June 10, 1986, (40 FR 21054).

On September 23, 1986, the current owner, Mr. James Padget, was notified of EPA's intentions to conduct a Remedial Investigation and Feasibility Study (RI/FS). He did not offer to perform any studies or remedial action at the site and informed EPA that he had filed for bankruptcy.

EPA on-site activities started early in 1987 when the Technical Assistance Team (TAT) conducted a site assessment. Approximately 60 soil samples, 27 barrels of waste, and four ground-water samples were submitted for cyanide and metal analysis. These samples included background samples from local residences. The EPA samples detected metals and cyanide contamination to a depth of 4 feet on-site, which was the maximum sampling depth. The well water samples collected did not detect cyanide contamination; however, low levels of metals were discovered in Arvin Industries East Well No. 2.

On June 5, 1987, a fence was constructed by EPA to prevent site access. On August 26 and 27, 20 drums containing inorganic materials were removed and disposed at a Resource Conservation Recovery Act (RCRA) compliant facility. During the week of August 29, 1987, TAT obtained subsurface soil samples to determine the vertical extent of contamination. Samples were also collected from a residence north of the site. Additional background soil samples were also collected. A total of 19 soil samples were collected on and near the site and submitted for analyses. On September 24, 1987, EPA removed and disposed of seven remaining drums and took seven samples of building materials, including ceiling brick and floor materials. Samples were analyzed for inorganic parameters.

In the Fall of 1987, the EPA performed a site building decontamination and limited soil removal action. Approximately one foot of top soil was removed from the open yard areas at the site. Several areas of visible contamination were noted adjacent to the building foundation during the top soil removal and a trench approximately four feet deep was excavated along the northern and southern foundation of the main process building to remove the discolored materials. All excavated areas were backfilled and regraded with clean soil. Contaminated subsurface soils identified during past EPA sampling activities were left on-site. The EPA also washed the interior surface of the main process building using caustic-sodium hypochlorite solution. This was performed in an attempt to remove surface contamination identified through past EPA sampling efforts.

EPA initiated a two-phased Remedial Investigation at the Tri-State site beginning in 1987 to determine the nature and extent of any remaining contamination following EPA's initial removal action activities. During the first phase of the study, EPA collected samples from 10 locations on the surface of walls, ceilings, and floors in the on-site buildings to determine whether the 1987 building decontamination activities had been successful. In addition, 25 surface and subsurface soil samples were collected to determine the depth of soil contamination at the site. EPA also installed four monitoring wells at the site and collected eight ground-water samples for laboratory analysis. These Phase I activities, completed in January 1988, revealed elevated levels of cyanide, chromium, copper, and cadmium on building surfaces and/or in subsurface soils and groundwater at the site.

Phase II activities involved installing eight new monitoring wells, collecting two rounds of 19 groundwater samples from on-site monitoring wells and industrial wells at Arvin Industries, and collecting 46 subsurface soil samples.

Based on the results of the Remedial Investigation, there was concern that contamination in on-site soil may continue to migrate into groundwater and that people or animals may come into direct contact with contaminated on-site buildings. Because of these concerns, the EPA conducted a second removal action at the site from February

to March 1989. This removal action, called an Expedited Response Action (ERA), involved excavating soil, decontaminating and demolishing all structures on the site, and transporting the soil, building debris, and asbestos found during the course of the cleanup to state and federally-regulated landfills. The excavated area was filled with clean soil, the site fence was removed, and the site was graded and revegetated.

During the ERA, EPA collected 357 subsurface soil samples on the site to determine the limits of excavation. EPA also collected 21 soil samples from the base of the excavated areas to determine the effectiveness of the removal activities. EPA also conducted a groundwater pump test to determine whether the migration of contaminated groundwater from the site could be prevented by the continuous withdrawal of groundwater and to calculate the pumping rate necessary to accomplish this objective. Groundwater sampling was conducted to determine the level of contamination in the groundwater following the groundwater pump test and site cleanup. Contaminated groundwater collected during the pump test was discharged to and treated at the Columbus wastewater treatment plant.

Based on the results of the RI/FS, and as described in the Proposed Plan, EPA recommended a Remedial Action involving the long-term operation of a groundwater extraction and treatment systen which utilized the existing on-site extraction well. A groundwater extraction and treatment system would provide for the long-term protection of public health and the environment.

On March 30, 1990, a Record of Decision (ROD) was signed which selected this remedy. The extraction and treatment of contaminated groundwater continued until the maximum groundwater remediation goals were met in 1995. The site groundwater was then sampled for a two year period to assure that the groundwater remediation goals were achieved permanently and that no further remediation would be required. This activity was completed in Spring of 1996.

EPA, with concurrence from the State of Indiana, has determined that all appropriate Fund-financed responses under CERCLA at the Tri-State Plating Superfund Site have been completed, and no further CERCLA response is appropriate in order to provide protection of human health and the environment. Therefore, EPA proposes to delete the site from the NPL.

Dated: May 9, 1997.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA, Region V.

[FR Doc. 97–13324 Filed 5–21–97; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 62, No. 99
Thursday, May 22, 1997

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

Submission for OMB Review; Comment Request

May 16, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- **Rural Housing Service**

Title: 7 CFR 1956–C, Debt Settlement-Community and Business Programs.

OMB Control Number: 0575–0124.

Summary of Collection: Information collected includes appraisals of property, adjustment agreements, and financial statements.

Need and Use of the Information: The information is used to authorize debt restructuring and loan servicing for borrowers who are delinquent due to no fault of their own and who have acted in good faith in connection with their loans.

Description of Respondents: Not-for-profit institutions; Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 17.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 448.

- **Forest Service**

Title: Bighorn National Forest Scenic Byways User Survey.

OMB Control Number: 0596–0140.

Summary of Collection: The purpose of this survey is to insure scenic byways users input is considered in the development of the scenic byways corridor management plans. Respondents include travelers, users and business interests that depend upon the byways.

Need and Use of the Information: The data will be used to assist public lands and highway managers; aid tourism and marketing efforts; and, insure enjoyment of the users.

Description of Respondents: Individuals or households; Business or other for-profit.

Number of Respondents: 300.

Frequency of Responses: Reporting: One time only.

Total Burden Hours: 100.

- **Procurement and Property Management**

Title: Procedure for Donation of Excess Research Equipment.

OMB Control Number: 0505–0019.

Summary of Collection: Executive Order 1282 require that Federal agencies annually report the volume of donations of excess research equipment to the General Services Administration. The additional information requested by the new 7 CFR 2812 requires eligible educational or nonprofit donee sponsored by USDA to justify need and usability for excess research equipment.

Need and Use of the Information: The information will be used by USDA officials to determine if donations of excess research equipment serves the best interests of the taxpayer.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 50.

- **Forest Service**

Title: American Heritage Rivers Initiative.

OMB Control Number: 0596–New.

Summary of Collection: President Clinton will offer special recognition to outstanding stretches of America's rivers by selecting them to be ''American Heritage Rivers''. Communities will nominate sites to be considered for this status by completing an application form.

Need and Use of the Information: The application form will be used to collect basic information on the communities or groups applying for designation including the stretch of river they wish to have designated, statement of objectives, their need for federal assistance, response to qualifying criteria, and action plan for implementation.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 250.

Frequency of Responses: Reporting: One-time only.

Total Burden Hours: 8,000.

Emergency processing of this submission has been requested by May 30, 1997.

- **Agricultural Marketing Service**

Title: Vegetable and Speciality Crop Marketing Orders.

OMB Control Number: 0581-New.

Summary of Collection: Information is collected from growers and handlers concerning referendum ballots, shipments of products, assessments, and disposition of crop.

Need and Use of the Information: The information is used to regulate the provisions of the marketing orders and for program compliance.

Description of Respondents: Business or other-for-profit; Individuals or households; Not-for-profit institutions; Farms; Federal Government.

Number of Respondents: 31,120.

Frequency of Responses: Recordkeeping: Reporting: On occasion; Weekly; Monthly; Quarterly; Semi-annually; Annually; Biennially.

Total Burden Hours: 8,527.

- **Rural Business-Cooperative Service**

Title: Annual Survey of Farmer Cooperatives and Questionnaire to Identify Farmer Cooperatives.

OMB Control Number: 0570–0007.

Summary of Collection: Information is collected on basic statistics of agricultural cooperatives.

Need and Use of the Information: The information is used for program planning, evaluation, and service work.

Description of Respondents: Business or other-for-profit.

Number of Respondents: 3,082.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 2,641.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–13497 Filed 5–21–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–039–1]

Hawaii Animal Import Center; Notice of Closure

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of closure.

SUMMARY: We are notifying the public of the closure of the Hawaii Animal Import Center in Honolulu, HI. We are no longer accepting reservations for quarantine space at the Hawaii Animal Import Center. The Hawaii Animal Import Center will officially close at the end of the business day on June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231, (301) 734–3276; or Dr. Robert DeCarolis, Area Veterinarian in Charge, Hawaii, VS, APHIS, 3375 Koapaka St., Suite H420, Honolulu, HI 96819, (808) 861–8560.

SUPPLEMENTARY INFORMATION:

Background

The Hawaii Animal Import Center (HAIC) in Honolulu, HI, serves as a quarantine station for domestic livestock and poultry, as well as other exotic animals and birds. In Honolulu, HAIC is located on property owned by the U.S. Coast Guard. The U.S. Coast Guard will be vacating this property at the beginning of Fiscal Year 1998 and has notified the Animal and Plant Health Inspection Service (APHIS) that it must also vacate the premises and return the property on which HAIC currently operates to the Coast Guard.

APHIS is no longer accepting reservations for quarantine space at HAIC. This is necessary to ensure that the facility does not have to delay its closure to care for sick animals in quarantine. HAIC will officially cease all operations at the close of the business day on June 30, 1997, to ensure that the property is vacant and returned to the Coast Guard by the close of the Fiscal Year 1997.

The closure of HAIC is not expected to have a significant impact on importers or other entities, large or small. Very few animals have been quarantined at the facility during the past 2 years. In a future edition of the **Federal Register**, we plan to publish a proposed rule to remove Honolulu from the list of areas in 9 CFR parts 92 and 98 that serve as quarantine locations in the United States. At that time, we will solicit comments from the public on whether to remove Honolulu, HI, as a quarantine location.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 19th day of May 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–13503 Filed 5–21–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Pilgrim Project, Tahoe National Forest Sierra County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) for proposed timber harvest, plantation thinning, fuels reduction, and wildlife habitat improvement projects for areas in the Wolf/Kanaka/Indian Creek and Middle Yuba River watersheds, in accordance with the requirements of 36 CFR 219.19. The project area is located within portions of T18N & T19N, R10E & R11E, MDB&M.

The agency invites comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full 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.

DATES: Comments should be made in writing and received by June 2, 1997.

ADDRESSES: Written comments concerning the project should be directed to U.S.F.S. Downieville Ranger District, ATTN: Laura Browning, 15924 Highway 49, Camptonville, CA 95959.

FOR FURTHER INFORMATION CONTACT: Laura Browning, NEPA Coordinator, Downieville Ranger District, Camptonville, CA 95922, (916) 288–3231.

SUPPLEMENTARY INFORMATION: About 11,436 acres of National Forest System lands are being analyzed for projects within the Pilgrim analysis area. The analysis area incorporates the land within the Wolf/Kanaka/Indian Creek and Middle Yuba River watersheds, which all drain into the Middle Yuba River. Located southwest of Camptonville, CA, the area is dominated by mixed conifer and hardwood forest.

This project was selected to harvest needed wood fiber, improve forest health and wildlife habitat, and to reduce fire risk. Watershed problems, fire hazards within a mixed land ownership landscape, forest health concerns, and wildlife habitat conditions represent some of the challengers and opportunities for improvements that will be looked at during this analysis. An EIS will be done because of the concern for potential cumulative effects to water quality.

In preparing the Environmental Impact Statement, the Forest Service will identify and analyze a range of alternatives for treatment of the dense timber stands and address the issues developed for these sites. One of the alternatives will be no treatment. Other alternatives will consider differing levels of plantation thinning; timber harvest; new road construction and reconstruction; fuel hazard reduction; and fish and wildlife habitat improvement projects. The needs of people and environmental values will

be blended in such a way that the Pilgrim analysis area would represent a diverse, healthy, productive, and sustainable ecosystem.

Public participation will be important during the analysis, especially during the review of the Draft Environmental Impact Statement. The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the Draft Environmental Impact Statement (DEIS).

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environment analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Comments from other Federal, State, and local agencies, organizations, and individuals who may be interested in, or affected by, the decision are encouraged to identify other significant issues. Public participation will be solicited through mailing letters to mining claim owners, private land owners, and special use permittees within the Downieville Ranger District boundaries; posting information in local towns; and mailing letters to local timber industries, politicians, school boards, county supervisors, and environmental groups. Continued participation will be emphasized through individual contacts. No public meetings are scheduled.

The DEIS is expected to filed with the Environmental Protection Agency (EPA) and to be available for public review in January, 1998. The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of 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). Also, environmental objections that could be raised at the DEIS state but, that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel* 803 F 2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris,* 490 F. Supp. 1334, 13338 (E.D. Wis. 1980). Because of the court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

It assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the DEIS or the merits of the alternatives formulated and discussed in the statement.

Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act 40 CFR 1503.3 in addressing these points.

The final EIS is expected to be available by May, 1998. The responsible official, the Forest Supervisor of the Tahoe National Forest, will document the decision and reasons for the decision in the Record of Decision.

Dated: April 28, 1997.

Judie Tartaglia,

Deputy Forest Supervisor.

[FR Doc. 97–13476 Filed 5–21–97; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine 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 Maine Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on Thursday, June 12, 1997, at the Central Maine Technical College, 1250 Turner Street, Auburn, Maine 04210. The Committee will reconvene at 10:00 a.m. and adjourn at 4:00 p.m. on Friday, June 13, 1997, at the Portland Arts and Technical High School, Room 213, 196 Allan Avenue, Portland, Maine 04103. The purpose of the meeting is to gather information on the project, Limited English Proficient Students in Maine: An Assessment of Equal Educational Opportunities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Barney Bérubé, 207–287–5980, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office 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, May 14, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–13386 Filed 5–21–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Seminar on the Final Antidumping Regulations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 5, 1997, the Department of Commerce will be holding a public seminar on the final antidumping regulations. In addition to a general overview of the new regulations, the seminar will include a presentation by Robert S. LaRussa, Acting Assistant Secretary for Import Administration. Materials, including a summary of the changes in the new regulations, will be available, and time has been allotted for questions and answers.

The seminar will be held at 9:30–12:00 in Room 1863 of the Herbert C. Hoover Building at Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. Members of the public wishing to register to attend must phone Ms. Lavenia Moultrie at (202) 482–1771.

FOR FURTHER INFORMATION CONTACT: Maria Tildon at (202) 482–5497.

Dated: May 19, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–13564 Filed 5–21–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Las Vegas and Anaheim

AGENCY: Minority Business Development Agency.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) program to operate the Las Vegas and Anaheim MBDCs. The solicitations were originally published in the **Federal Register** on Wednesday, June 12, 1996, Vol. 61, No. 114, Page 29733 and Wednesday, August 14, 1996, Vol. 61, No. 158, Page 42232.

(Catalog of Federal Domestic Assistance: 11.800 Minority Business Development Center)

Dated: May 14, 1997.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 97–13431 Filed 5–21–97; 8:45 am]

BILLING CODE 3510–21–M

DEPARTMENT OF COMMERCE

Technical Advisory Committee To Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure

AGENCY: Technology Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure will hold a meeting on June 18–19, 1997. The Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure was established by the Secretary of Commerce to provide industry advice to the Department on encryption key recovery for use by federal government agencies. All sessions will be open to the public.

DATES: The meeting will be held on June 18–19, 1997 from 9:00 a.m. to 6:00 p.m.

ADDRESS: The meeting will take place at the Radisson Plaza Hotel, 35 South 7th Street, Minneapolis, Minnesota.

FOR FURTHER INFORMATION CONTACT: Edward Roback, Committee Secretary and Designated Federal Official, Computer Security Division, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, Maryland 20899; telephone 301–975–3696. Please do not call the conference facility regarding details of this meeting.

SUPPLEMENTARY INFORMATION:

1. Agenda

Opening Remarks
Chairperson's Remarks
News Updates (Members, Federal Liaisons, Secretariat)
Working Group (WG) Reports
WG1—Framework
WG2—Security Models
WG3–4—Key Recovery Agents (KRA) and Non-KRA Elements
WG5—Interoperability
Intellectual Property Issues (as necessary)
Public Participation
Plans for Next Meeting
Closing Remarks

Note: The items in this agenda are tentative and subject to change due to logistics and speaker availability.

2. Public Participation

The Committee meeting will include a period of time, not to exceed thirty minutes, for oral comments from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the individual identified in the **FOR FURTHER INFORMATION** section. In addition, written statements are invited and may be submitted to the Committee at any time. Written comments should be directed to the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, Maryland 20899. It would be appreciated if sixty copies could be submitted for distribution to the Committee and other meeting attendees.

3. Additional information regarding the Committee is available at its world wide web homepage at: http://csrc.nist.gov/tacdfipsfkmi/.

4. Should this meeting be canceled, a notice to that effect will be published in the **Federal Register** and a similar notice placed on the Committee's electronic homepage.

Dated: May 19, 1997.

Mark Bohannon,

Chief Counsel for Technology Administration.

[FR Doc. 97–13470 Filed 5–21–97; 8:45 am]

BILLING CODE 3510–CN–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increases in Guaranteed Access Levels for Certain Cotton and Wool Textile Products Produced or Manufactured in Costa Rica

May 16, 1997.

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

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

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

Upon the request of the Government of Costa Rica, the U.S. Government has agreed to increase the current Guaranteed Access Levels (GALS) for Categories 347/348 and 447.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66263, published on December 17, 1996). Also see 61 FR 69081, published on December 31, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 16, 1997.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on May 22, 1997, you are directed to increase the Guaranteed Access Levels (GALS) for the following categories, as provided for under the Uruguay Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Guaranteed Access Level
347/348	2,300,000 dozen.
447	10,000 dozen.

The limits for the foregoing categories remain unchanged.

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

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–13394 Filed 5–21–97; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Development of Safety Standard for Escalators

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition from Scott and Diana Anderson for development of a safety standard for escalators. The petition alleges that escalators are associated with unreasonable risks of serious injuries resulting from entrapment of feet, toes, and other body parts in openings between the moving stairs and the sides of escalators. The Commission solicits written comments concerning the petition.

DATES: Comments on the petition and the report should be received in the Office of the Secretary by July 21, 1997.

ADDRESSES: Comments, preferably in five copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. Alternatively, comments may be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned ''Petition CP 97–1 Requesting Development of a Safety Standard for Escalators.'' A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800.

SUPPLEMENTARY INFORMATION: The Commission has docketed a submission from Scott and Diana Anderson requesting development of a safety standard for escalators as a petition for rulemaking under the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*).

The petition requests development of a standard containing requirements to prevent entrapment of feet, toes, and other body parts in openings between the moving stairs and the sides of escalators and requirements for signs to warn consumers of risks of injury associated with escalators. The Commission solicits written comments on this petition from all interested persons through July 21, 1997.

A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland. Interested persons may obtain a copy of the petition by calling or writing to Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800.

Dated: May 19, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–13537 Filed 5–21–97; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Forms, and OMB Number: Department of Defense Medical Examination Review Board (DoDMERB) Medical Information Collection; DD Forms 2351, 2370, 2372, 2374, 2375, 2378, 2379, 2380, 2381, 2382, 2383, 2480, 2489, and 2492; OMB Number 0704–[to be determined].

Type of Request: New Collection.

Number of Respondents: 19,000.

Responses per Respondent: 1.

Annual Responses: 19,900.

Average Burden per Response: 60 minutes.

Annual Burden Hours: 19,000.

Needs and Uses: The information collection requirement is necessary to determine the medical qualification of applicants to the five Service academies, the Four Year Reserve Officer Training Corps Scholarship Program, Uniformed Services University of the Health Sciences, and the Army, Navy, and Air Force Scholarship Program. The completed forms are processed through medical reviewers representing their respective Services to determine a medical qualification status. Associated forms may or may not be required depending on the medical information contained in the examination. If the medical examination and necessary associated forms are not accomplished, individuals reviewing the medical qualification status cannot be readily assured of the medical status of the individual. Without this process the individual applying to any of these programs could not have the medical qualification determination essential to ensure compliance with the physical standards established for the respective military service program.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 16, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–13374 Filed 5–21–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Be a Good Neighbor Survey, OMB Number 0701–0131.

Type of Request: Revision.

Number of Respondents: 427.

Responses per Respondent: 1.

Annual Responses: 427.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 34.

Needs and Uses: The information collection instrument is used to provide: (a) The general public with an opportunity to interface with Air Force Materiel Command Community Relations Divisions located at fourteen installations across the United States; (b) individual AFMC Public Affairs Offices feedback about the ongoing, perceived relationship between their base and individuals in surrounding communities; and (c) HQ AFMC a tool to measure the overall impact of its community relations programs and held plan future activities.

Affected Public: Individuals or Households.

Frequency: Biennially, On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 16, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–13375 Filed 5–21–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Meeting

AGENCY: Office of the Assistant Secretary of Defense, Strategy and Requirements.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: June 23, 1997.

ADDRESSES: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: collier@nsep.policy.osd.mil

SUPPLEMENTARY INFORMATION: The Board meeting is open to the public.

Dated: May 15, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–13373 Filed 5–21–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The 1997 Summer Study Panel Meeting of the Environment Panel of the HQ USAF Scientific Advisory Board will meet in Los Angeles, CA on June 26, 1997, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for the 1997 Summer Study topic on Air Expeditionary Forces.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–13477 Filed 5–21–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

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

Name of Committee: Army Science Board (ASB).

Date of Meeting: June 16 & 26, 1997.

Time of Meeting: 0800–1700 (all days).

Place: Beckman Center—Irvine, CA.

Agenda: The Army Science Board (ASB) will meet for the 1997 Summer Studies Final Report Writing Session for ''Battlefield Visualization'' and ''Distance Learning.'' These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call our office at (703) 695–0781.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 97–13469 Filed 5–21–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent to Grant an Exclusive or Partially Exclusive License to Allen Telecom Group, Inc., Decibel Products Division

AGENCY: U.S. Army Research Laboratory DOD,

ACTION: Notice of Intent.

SUMMARY: In compliance with 37 CFR 404 *et seq.*, the Department of the Army hereby gives notice of its intent to grant to Allen Telecom Group, Inc., Decibel Products Division, a corporation having its principle place of business at 8635 Stemmons Freeway, Dallas, Texas, 75247–3701, an exclusive or partially exclusive licenses under U.S. Patents 5,561,407, issued 1 Oct 1996, entitled ''Single Substrate Planar Digital Ferroelectric Phase Shifter''; 5,307,033, issued 26 April 1994, entitled ''Planar Digital Ferroelectric Phase Shifter''; and 5,617,103, issued 1 April 1997, entitled ''Ferroelectric Phase Shifting Antenna Array''. Anyone wishing to object to the

granting of these licenses has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 459, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–13417 Filed 5–21–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive or Partially Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents cover a wide variety of technical arts including (1) Triggering Mechanisms for Fuze S&A's (2) Antenna for Radiating UWB RF Pulses (3) Alignment of Multimode Optical Fibers, as well as many other different technical arts.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wishes to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Multi-Channel Fiber Optic.
Inventer(s): Greg Behrmann, Dale Smith and Greg Ronan.
Patent Number: 5,598,494.
Issue Date: January 28, 1997.

Title: Integrated Magnetic Exploding Foil Initiator Fire Set.
Inventor(s): Donald Hunter.
Patent Number: 5,600,293.
Issue Date: February 4, 1997.

Title: Millennium Bandwidth Antenna.
Inventor(s): John McCorkle.
Patent Number: 5,606,331.
Issue Date: February 25, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Vaught, U.S. Army Research Laboratory, ATTN: AMSRL–CS–TT, Technology Transfer Manager, 2800 Powder Mill Road, Adelphi, Maryland 20783–1197; telephone: (301) 394–2952 or telefax (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–13420 Filed 5–21–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of Surplus Land and Buildings Located at Sierra Army Depot (SIAD), Herlong, California

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: This notice identifies the surplus real property located at Sierra Army Depot (SIAD), Herlong, California. SIAD is located approximately 55 miles north northwest of Reno, Nevada just north of U.S. Highway 395. SIAD is a base realignment facility and major portions of the installation are being retained for active missions.

FOR FURTHER INFORMATION CONTACT: For more information regarding a particular building or parcel (i.e. acreage, floor plans, existing utilities, exact street address), contact Mr. Jimmy Spain, Base Transition Coordinator at (916) 827–4488; Mr. Larry Weed, Base Transition Officer, at (916) 827–4391; or Ms. Karen Fisbeck, Realty Specialist, (916) 557–6845.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

This surplus real property consists of approximately a 2,228 acre parcel located at the airfield. The current range of uses include airport, light industrial, storage, and commercial facilities.

Notices of interest must be submitted within 90 days from April 24, 1997. Notices of interest should be forwarded to Sierra Local Redevelopment Authority, Attention: Mr. Pat Landon, 1121–A Honey Way, P.O. Box 117, Herlong, CA 96113, 916–827–3480.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–13419 Filed 5–21–97; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Daniel Island Terminal(s) in the City of Charleston, Berkeley County, South Carolina

AGENCY: U.S. Army Corps of Engineers, Charleston District, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers, Charleston District intends to prepare a DEIS to access the social, economic and environmental effects of the proposed construction of the Daniel Island Terminal in the City of Charleston, Berkeley County, South Carolina. The DEIS will assess potential impacts on a range of alternatives, including the preferred alternative.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about the proposed action and DEIS, please contact Ms. Tina Hadden, Project Manager, telephone (803) 727–4330 or 1–800–208–2054, CESAC–CO–P, 334 Meeting Street, Charleston, South Carolina.

SUPPLEMENTARY INFORMATION: The Charleston District intends to prepare a DEIS on the proposed marine cargo terminal on Daniel Island which is located in the City of Charleston, Berkeley County, South Carolina. This project is proposed by the South Carolina State Ports Authority (SPA).

1. Description of Proposed Project

The proposed project is the creation by the South Carolina State Ports Authority (SCSPA) of a marine cargo terminal complex at Daniel Island in the City of Charleston, Berkeley County, South Carolina, which includes the following components: approximately 1,300 acres of port terminal development at the south end of Daniel Island to include cargo marshaling areas, cargo processing areas, cargo-handling facilities, intermodal rail facilities, and related terminal operating facilities; approximately 7,000 feet of wharf and berthing area on the Cooper River and approximately 5,000 feet of wharf and berthing area on the Wando River; approximately 35 acres of

dredged berthing area; associated improvements to the Wando River Channel; approximately 2.5 miles of multi-lane roadway construction between the proposed terminal site and Interstate I–526; approximately 11 miles of rail connecting the proposed terminal facilities to the East Cooper and Berkeley Railroad; and a rail bridge and road bridge over Beresford Creek.

2. Alternatives

The following alternatives will be examined to identify the reasonable alternatives to be fully evaluated in the DEIS: No Action; the modification of existing SCSPA terminal facilities to meet the purpose and need of and for the proposed project; alternative locations within the jurisdictional authority of the SCSPA where the proposed facilities might be developed, including locations within and outside of Charleston Harbor; alternative facility layouts for the proposed terminal facilities; and alternative methods and locations for providing surface transportation access to the proposed terminal facilities.

3. Scoping and Public Involvement Process

Scoping Meetings to gather information on the subjects to be studied in detail in the DEIS will be conducted. There will be two (2) sessions, one specifically for the Federal and State agencies with regulatory responsibilities and one for the general public. These meeting are as follows:

Federal and State Agency Scoping Meeting: June 24, 1997, 2:00 pm, Charleston Museum Auditorium, 360 Meeting Street, Charleston, South Carolina 29403.

General Public Scoping Meeting: June 24, 1997, 7:00 pm, Charleston Museum Auditorium, 360 Meeting Street, Charleston, South Carolina 29403.

Additional public and agency involvement will be accomplished through the establishment of a Study Resource Committee to assist the Corps of Engineers with the development of the DEIS, through the conduct of public information meetings, and through a public hearing.

4. Significant Issues

Issues associated with the proposed facilities to be given significant analysis in the DEIS are likely to include, but may not be limited to, the potential impacts of the proposed dredging, placement of fill, construction and operation of the proposed terminal and surface transportation facilities, and of induced developments on: wetland resources; upland and aquatic biotic communities; water quality; fish and wildlife values including threatened and endangered species; noise and light levels in areas adjoining the proposed facilities; air quality; land forms and geologic resources; community cohesion; environmental justice; roadway traffic; socioeconomic environment; archaeological and cultural resources; recreation and recreational resources; § 4(f) and 6(f) properties (parks and/or sites of cultural significance); public infrastructure and services; energy supply and natural resources; hazardous wastes and materials; land use; aesthetics; public health and safety; parklands; prime farmlands; ecologically critical areas; navigation; flood plain values; shoreline erosion and accretion; and the needs and welfare of the people.

5. Cooperating Agencies

Those agencies having permitting, certifying, or other approved authorities will be asked to be cooperating agencies and to assist in the preparation of this DEIS.

6. Additional Review and Consultation

Additional review and consultation which will be incorporated into the preparation of this DEIS will include: compliance with the South Carolina Coastal Zone Management Act; protection of cultural resources under Section 106 of the Historic Preservation Act; protection of water quality under Section 401 of the Clean Water Act; and protection of endangered and threatened species under Section 7 of the Endangered Species Act.

7. Availability of the DEIS

The Draft Environmental Impact Statement is projected to be available in September 1998. A Public Hearing will be conducted following the release of the DEIS.

Thomas F. Julich,

Lieutenant Colonel, U.S. Army District Engineer.

[FR Doc. 97–13418 Filed 5–21–97; 8:45 am]

BILLING CODE 3710–CH–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 21, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (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 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 Director, Information Resources Management Group 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) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this

collection on the respondents, including through the use of information technology.

Dated: May 16, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Management

Type of Review: New.

Title: Department of Education Federal Cash Award Certification Statement and Department of Education Federal Cash Quarterly Confirmation Statement.

Frequency: Annually.

Affected Public: Business or other for-profit; Not for Profit institutions; Federal Government; State, Local or Tribal Government, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 12,000.

Burden Hours: 38,160.

Abstract: The collection of the Federal Cash Award Statement is necessary for the Agency to monitor cash advanced to grantees and to obtain expenditure information for each grant from grantees. Information collection is used to report total outlays to the Office of Management and Budget and the Department of the Treasury and is used to project the Federal government's and the Department's financial condition. This information collection also enables the Department to provide Treasury with outlay information to facilitate Treasury's estimation of future borrowing requirements. Respondents include over 12,000 State, local, college, university, proprietary school and non-profit grantees who draw funds from the Department.

The collection of Federal cash quarterly confirmation statement enables grantees to identify discrepancies in grant authorizations, and funds drawn and funds refunded. Action is required only if a grantee's records do not agree with the information contained on the statement. This information will be used to help grantees report and initiate resolution of discrepancies. Respondents include over 12,000 State, local, college, university, proprietary school and non-profit grantees who draw funds from the Department.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Grantee Reporting Form.

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 165.

Burden Hours: 330.

Abstract: Rehabilitation Services Administration (RSA) training grants provide stipends to ''RSA Scholars'' in order to train skilled rehabilitation personnel. Grantees are required to ''track'' scholars, relative to the ''payback'' provision in the Rehabilitation Act. Data collection is reported annually to RSA in order to monitor performance and report progress to Congress.

[FR Doc. 97–13413 Filed 5–21–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Surplus Plutonium Disposition Environmental Impact Statement

AGENCY: Department of Energy

ACTION: Notice of intent

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) on the disposition of United States' weapons-usable surplus plutonium. This EIS is tiered from the Storage and Disposition of Weapons-Usable Fissile Materials Programmatic Environmental Impact Statement (Storage and Disposition PEIS) (DOE/EIS–0229), issued in December 1996, and the associated Record of Decision (62 FR 3014), issued on January 14, 1997.

The EIS will examine reasonable alternatives and potential environmental impacts for the proposed siting, construction, and operation of three types of facilities for plutonium disposition. The first is a facility to disassemble and convert pits (a nuclear weapons component) into plutonium oxide suitable for disposition. As explained in the January 1997 Record of Decision, this pit disassembly and conversion facility will be located at either DOE's Hanford Site, Idaho National Engineering and Environmental Laboratory (INEEL), Pantex Plant, or Savannah River Site (SRS). The second is a facility to immobilize surplus plutonium in a glass or ceramic form for disposition in a geologic repository pursuant to the Nuclear Waste Policy Act. This second facility will be located at either Hanford or SRS, and include a collocated capability to convert non-pit plutonium materials into a form suitable for immobilization. The EIS will discuss various technologies for immobilization. The third type of facility would fabricate plutonium oxide into mixed oxide (MOX) fuel. The MOX fuel fabrication facility would be located at either Hanford, INEEL, Pantex or SRS. MOX fuel would be used in existing commercial light water reactors in the United States, with subsequent disposal of the spent fuel in accordance with the Nuclear Waste Policy Act. Some MOX fuel could also be used in Canadian deuterium uranium (CANDU) reactors depending upon negotiation of a future international agreement between Canada, Russia, and the United States. The EIS will also discuss decommissioning and decontamination (D&D) of the three facilities.

This Notice of Intent describes the Department's proposed action, solicits public input, and announces the schedule for the public scoping meetings.

DATES: Comments on the proposed scope of the Surplus Plutonium Disposition EIS (SPD EIS) are invited from the public. To ensure consideration in the draft EIS, written comments should be postmarked by July 18, 1997. Comments received after that date will be considered to the extent practicable. DOE will hold interactive scoping meetings near sites that may be affected by the proposed action to discuss issues and receive oral and written comments on the scope of the EIS. The locations, dates and times for these public meetings are included in the Supplementary Information section of this notice and will be announced by additional appropriate means.

ADDRESSES: Comments and questions concerning the plutonium disposition program can be submitted by calling (answering machine) or faxing them to the toll free number 1–800–820–5156, or by mailing them to: Bert Stevenson, NEPA Compliance Officer, Office of Fissile Materials Disposition, U.S. Department of Energy, Post Office Box 23786, Washington, DC 20026–3786.

Comments may also be submitted electronically by using the Office of Fissile Materials Disposition's web site. The address is http://web.fie.com/fedix/fisl.html.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance, U.S. Department of Energy 1000, Independence Avenue, S.W., Washington, DC 20585, 202–586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

The Storage and Disposition Programmatic Environmental Impact Statement (PEIS) analyzed the potential environmental consequences of alternatives for the long-term storage (up to 50 years) of weapons-usable fissile materials and the disposition of surplus plutonium. Surplus plutonium for disposition refers to that weapons-usable plutonium that the President has declared surplus to national security needs, as well as such plutonium that may be declared surplus in the future. As stated in the Record of Decision for the Storage and Disposition PEIS, the Department decided to pursue a hybrid approach that allows immobilization of surplus plutonium in glass or ceramic form and burning of some of the surplus plutonium as MOX fuel in existing, commercial light water reactors in the United States (and potentially in Canadian Deuterium Uranium (CANDU) reactors in Canada depending on future international agreement). The Department decided that the extent to which either or both of these disposition approaches would ultimately be deployed would depend in part upon future NEPA review, although the Department committed to immobilize at least 8 metric tons (tonnes) of currently declared surplus plutonium and reserved the option of immobilizing all surplus weapons plutonium. In the Record of Decision for the Storage and Disposition PEIS, the Department further decided to: (1) locate the immobilization facility (collocated with a plutonium conversion facility) at either Hanford or SRS; (2) locate a potential MOX fuel fabrication facility at either Hanford, INEEL, Pantex, or SRS; (3) locate a pit disassembly and conversion facility at either Hanford, INEEL, Pantex, or SRS; and (4) determine the specific technology for immobilization based in part on this follow-on disposition EIS.

The processes, materials and technologies involved in surplus plutonium disposition are depicted in Figure 1.

BILLING CODE 6450–01–P

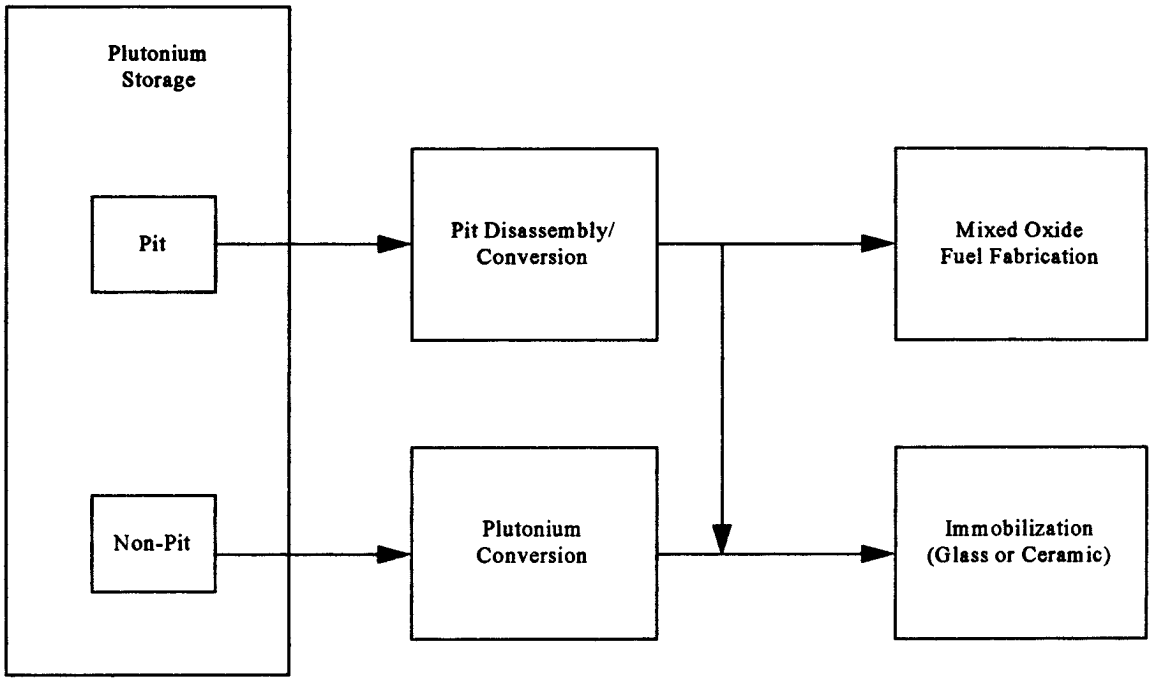

Figure 1. Plutonium Disposition Processes in DOE's Proposed Action

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Proposed Action

The Department proposes to determine whether to continue with both the immobilization and MOX approaches for surplus plutonium disposition and if so, to site, construct, and operate and ultimately D&D three types of facilities for plutonium disposition at one or more of four DOE sites, as follows:

- A collocated non-pit plutonium conversion and immobilization facility at either Hanford, near Richland, Washington, or SRS, near Aiken, South Carolina, with sub-alternatives for the technology and facilities used to form the immobilized plutonium.
- A pit disassembly/conversion facility at either Hanford; SRS; INEEL, near Idaho Falls, Idaho; or the Pantex Plant, near Amarillo, Texas.
- A MOX fuel fabrication facility at either Hanford, INEEL, Pantex, or SRS, with sub-alternatives for fabrication of Lead Test Assemblies for use in fuel qualification demonstrations.

Construction of these facilities would be on previously disturbed land and could include the modification of existing facilities where practicable, to reduce local environmental impacts, reduce costs, and shorten schedules. In the pit disassembly and conversion facility, the Department proposes to disassemble surplus pits and convert the plutonium in them to an unclassified oxide form suitable for disposition. The Department also proposes to convert most non-pit plutonium materials to plutonium oxide at the plutonium conversion facility, which will be collocated with the immobilization facility.

Plutonium Disposition Decisions

The Department expects to make the following decisions based upon the results of this EIS and other information and considerations:

- Whether to construct and operate collocated plutonium conversion and immobilization facilities, and if so, where (including selection of the specific immobilization technology).
- Whether to construct and operate a pit disassembly/conversion facility, and if so, where.
- Whether to construct and operate a MOX fuel fabrication facility, and if so, where (including selection of the site for fabrication of Lead Test Assemblies).

The exact extent to which the MOX approach would ultimately be deployed will depend on a number of factors, in addition to environmental impacts. These are likely to include cost, contract negotiations, and international agreements.

Alternatives

No Action

A No Action alternative will be analyzed (Alternative 1) in the SPD EIS. Implementation of the No Action alternative would mean that disposition would not occur, and surplus weapons-usable plutonium, including pits, metals and oxides, would remain in storage in accordance with the Storage and Disposition PEIS Record of Decision.

Plutonium Disposition Alternatives

The SPD EIS will analyze alternatives for the siting, construction and operation of the three facilities at various candidate sites as described in the Proposed Action. These facilities would be designed so that they could collectively disposition surplus plutonium (existing and future) over their operating lives. Although the exact quantity of plutonium that may be declared surplus over time is not known, for purposes of analysis a nominal 50 tonnes of surplus plutonium will be used for assessing the environmental impacts of plutonium disposition activities at the various candidate sites. Under alternatives involving the ''hybrid'' (immobilization and MOX) approach selected in the Storage and Disposition Record of Decision, the SPD EIS will analyze the same distribution of surplus plutonium that was analyzed in the Storage and Disposition PEIS, which is fabrication of pits and pure plutonium metal or oxide (approximately 33 tonnes) into MOX fuel, and immobilization of the remaining non-pit plutonium (approximately 17 tonnes). The Record of Decision on the Storage and Disposition PEIS states, ''DOE will immobilize at least eight tonnes of currently declared surplus plutonium materials that DOE has already determined are not suitable for use in MOX fuel.'' Since the issuance of that decision, the Department has further determined that a total of about 17 tonnes of surplus plutonium is not suitable for use in MOX fuel without extensive processing. Thus, an alternative for fabricating all surplus plutonium into MOX fuel will not be analyzed. However, converting the full 50 tonnes of surplus plutonium into an immobilized form will be analyzed as a reasonable alternative.

Under each disposition approach, DOE could in principle locate one, two, or all three facilities at a candidate site. However, locating one facility at each of three sites would mean conducting disposition activities at three widely separated locations around the country. This would substantially increase transportation cost, unnecessarily increase exposure of workers and the public, and increase transportation risks, without any apparent compensating benefit. Therefore, the Department is proposing to consider only alternatives that locate two or more facilities at one site, with the possibility of one facility at a separate site. Further, certain combinations of facilities and sites are not being considered as reasonable alternatives, because they would also substantially increase transportation cost, unnecessarily increase exposure to workers and the public, and increase transportation risks, without any apparent compensating benefit.

Based on the above considerations and the candidate site selections in the Storage and Disposition Record of Decision, the following alternatives have been developed in addition to the No Action alternative. Table 1 summarizes the alternatives by site. Alternatives 2 through 10 (see Table 1) would involve immobilization of approximately 17 tonnes of low purity (non-pit) plutonium, and fabrication of approximately 33 tonnes of high purity plutonium (pits and plutonium metal) into MOX fuel. The differences among alternatives 2 through 10 are the locations of the proposed facilities. Alternatives 11 and 12 would involve immobilization of all 50 tonnes of plutonium at either Hanford or SRS.

The Department has identified existing facilities that can be modified for use in plutonium disposition at various candidate sites. A summary of the existing and new facilities (shown in the parentheses in Table 1) to be used in the SPD EIS analyses is given in Table 1, where FMEF is the Fuel and Materials Examination Facility, FPF is the Fuel Processing Facility, and DWPF is the Defense Waste Processing Facility.

Lead Test Assemblies

With respect to the MOX alternatives, the Department would qualify MOX fuel forms for use in existing commercial reactors. DOE will analyze two sub-alternatives for the fabrication of the lead test assemblies needed to qualify the fuel. In one sub-alternative, the lead test assemblies would be fabricated in the United States. Fabrication in the United States would involve constructing a pilot capability in conjunction with the fuel fabrication facility. Therefore, the potential sites include the candidate sites for the fuel fabrication facility (i.e., Hanford, INEEL, Pantex, and SRS). The pilot capability could also be located in an existing small facility at the Los Alamos National Laboratory (LANL). The

second alternative would be for fabrication in existing European facilities; three potential fabrication sites exist (Belgium, France, and the United Kingdom) that would allow fabrication of the Lead Test Assemblies sooner than with any facility under the United States alternative.

TABLE 1.—DISPOSITION ALTERNATIVES

Alternative/Site/Disposition Facility				
Alt. No.	Pit disassembly	MOX plant	Plutonium conversion and immobilization	Amounts of plutonium
1	No Action			
2	Hanford (FMEF)	Hanford (FMEF)	Hanford (FMEF)	17t Immobilization / 33t MOX.
3	SRS (New)	SRS (New)	SRS (New, or Bldg 221F, and DWPF)	17t Immobilization / 33t MOX.
4	Pantex (New)	Hanford (FMEF)	Hanford (FMEF)	17t Immobilization / 33t MOX.
5	Pantex (New)	SRS (New)	SRS (New, or Bldg 221F, and DWPF)	17t Immobilization / 33t MOX.
6	Hanford (FMEF)	Hanford (FMEF)	SRS (New, or Bldg 221F, and DWPF)	17t Immobilization / 33t MOX.
7	INEEL (FPF)	INEEL (New)	SRS (New, or Bldg 221F, and DWPF)	17t Immobilization / 33t MOX.
8	INEEL (FPF)	INEEL (New)	Hanford (FMEF)	17t Immobilization / 33t MOX.
9	Pantex (New)	Pantex (New)	SRS (New, or Bldg 221F, and DWPF)	17t Immobilization / 33t MOX.
10	Pantex (New)	Pantex (New)	Hanford (FMEF)	17t Immobilization / 33t MOX.
11	Hanford (FMEF)	N/A	Hanford (FMEF)	50t Immobilization / 0t MOX.
12	SRS (New)	N/A	SRS (New, or Bldg 221F, and DWPF)	50t Immobilization / 0t MOX.

Immobilization Technology

The Record of Decision on the Storage and Disposition PEIS stated, ''Because there are a number of technology variations that could be used for immobilization, DOE will also determine the specific immobilization technology based upon the follow-on EIS * * *'' (i.e., the SPD EIS). The technologies to be considered are those identified as variants in the Storage and Disposition PEIS.

Preferred Alternative

For immobilization, the Department prefers to use the ''can-in-canister'' technology at the DWPF at SRS. Under the can-in-canister approach, cans containing plutonium in glass or ceramic form would be placed in DWPF canisters, which would be filled with borosilicate glass containing high-level waste.

Classified Information

The Department plans to prepare the SPD EIS as an unclassified document with a classified appendix. The classified information in the SPD EIS will not be available for public review. However, the classified information will be considered by DOE in reaching a decision on the disposition of surplus plutonium. DOE will provide as much information as possible in unclassified form to assist public understanding and comment.

Research and Development Activities

The Department recently announced its intent to prepare two environmental assessments (EAs) for proposed research and development activities that DOE would conduct prior to completion of the SPD EIS and ROD. One EA will analyze the potential environmental impacts of a proposed pit disassembly and conversion integrated systems test at LANL. In addition, to further the purposes of NEPA, this EA will describe other research and development activities currently on-going at various sites, including work related to immobilization and to MOX fuel fabrication. The other EA will be prepared for the proposed shipment of special MOX fuel to Canada for an experiment involving the use of United States and Russian fuel in a Canadian test reactor, for development of fuel for the CANDU reactors. This EA will analyze the prior and future fabrication and proposed shipment of the fuel pellets needed for the experiment.

Relationships With Other DOE NEPA Activities

In addition to the SPD EIS and the EAs discussed above, the Department is currently conducting NEPA reviews of other activities that have a potential relationship with the SPD EIS. They include:

1. *Waste Management Programmatic Environmental Impact Statement for Managing Treatment, Storage and Disposal of Radioactive and Hazardous Waste* (DOE/EIS–0200D) (Draft issued: September 22, 1995; 60 FR 49264).

2. *Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site EIS* (Notice of Intent to Prepare an Environmental Impact Statement: November 19, 1996; 61 FR 58866).

Invitation To Comment

DOE invites comments on the scope of this EIS from all interested parties, including potentially affected Federal, State, and local agencies, and Indian tribes. Comments can be provided by any of the means listed in the Address Section of this notice and by providing oral and written comments at the scoping meetings.

The Department is requesting, by separate correspondence, that Federal agencies [1] desiring to be designated as cooperating agencies on the SPD EIS inform DOE by July 18, 1997.

Scoping Meetings

Public scoping meetings will be held near each site that may be affected by the proposed action. The interactive scoping meetings will provide the public with the opportunity to present comments, ask questions, and discuss concerns regarding plutonium disposition activities with DOE officials, and for the Department to receive oral and written comments on the scope of the EIS. Written and oral comments will be given equal weight in the scoping process. Input from the scoping meetings along with comments received by other means (phone, mail, fax, web-site) will be used by the Department in refining the scope of the EIS. The locations and dates for these public meetings are as shown below. All meetings will consist of two sessions (1:00 pm to 4:00 pm and 6:00 pm to 9:00 pm).

Hanford Site:

July 1, 1997
Shilo Inn
50 Comstock
Richland, WA 99352
509–946–4661

[1] Arms Control and Disarmament Agency; Department of Defense; Department of State; Environmental Protection Agency; and Nuclear Regulatory Commission.

Idaho National Engineering and Environmental Laboratory

June 10, 1997
Shilo Inn
780 Lindsay Boulevard
Idaho Fall, ID 83402
208–523–0088

Pantex Plant

June 12, 1997
Radisson Inn Airport
7909 I–40 East at Lakeside
Amarillo, TX 79104
806–373–3303

Savannah River Site

June 19, 1997
North Augusta Community Center
495 Brookside Avenue
North Augusta, SC 29841
803–441–4290

Advanced registration for the public meetings is requested but not required. Please call 1–800–820–5134 and leave your name and the location of the meeting(s) you plan to attend. This information will be used to determine the size and number of rooms needed for the meeting.

Scoping Meeting Format:

The Department intends to hold a plenary session at the beginning of each scoping meeting in which DOE officials will more fully explain the framework for the plutonium disposition program, the proposed action, preliminary alternatives for accomplishing the proposed action and public participation in the NEPA process. Following the plenary session, the Department intends to discuss relevant issues in more detail, answer questions, and receive comments. Each scoping meeting for the Surplus Plutonium Disposition EIS will have two sessions, with each session lasting approximately three to four hours.

Issued in Washington, DC this 16 day of May, 1997, for the United States Department of Energy.

Peter N. Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

[FR Doc. 97–13494 Filed 5–21–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–165–003]

Alabama-Tennessee Natural Gas Company; Notice of Compliance Filing

May 16, 1997.

Take notice that on May 12, 1997, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing the tariff sheets listed in Appendix A to the filing, to be effective June 1, 1997.

Alabama-Tennessee states that the tariff sheets are submitted in compliance with Order No. 587 and the Commission's order issued on May 1, 1997 FERC ¶ 61,117).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13441 Filed 5–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES97–32–000]

Citizens Utilities Company; Notice of Application

May 16, 1997.

Take notice that on May 9, 1997, Citizens Utilities Company (Applicant) filed an application with the Federal Energy Regulatory Commission under § 204 of the Federal Power Act requesting orders (a) extending the effectiveness of the order in Docket No. ES95–34–000 until the close of business on June 30, 1997, and (b) authorizing the issuance, from time to time, of up to 50,000,000 shares of common stock as stock dividends on shares of its outstanding common stock during a two-year period ending July 1, 1999.

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 1st Street, NE, Washington, D.C. 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 May 20, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the 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. 97–13437 Filed 5–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–712–000]

Discovery Gas Transmission LLC; Notice of Site Visit

May 16, 1997.

On May 22, 1997, beginning at 9:30 a.m., the Office of Pipeline Regulation (OPR) staff will conduct a compliance inspection of the onshore facilities of the Discovery Gas Transmission LLC Pipeline Construction Project in Lafourche Parish, Louisiana, beginning at the Larose Gas Processing Plant site (off state highway 24) in Larose.

All parties may attend. Those planning to attend must provide their own transportation (an air boat is required for most of the pipeline route).

For further information, please contact Paul McKee at (202) 208–1088.

Warren C. Edmunds,

Acting Director, Office of Pipeline Regulation.

[FR Doc. 97–13434 Filed 5–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2846–000]

Florida Power Corporation; Notice of Filing

May 16, 1997.

Take notice that on May 5, 1997, Florida Power Corporation (Florida Power) filed an Application for an Order Approving Market-Based Rates for Sales Outside of Florida. In its Application, Florida Power requests authorization to engage in wholesale, bulk power sales outside of Florida at market-determined prices, including sales not involving Florida Power's generation or transmission. Florida Power requests an effective date of 60 days after this filing, or the date on which the Commission issues an order approving Florida Power's application for market-based rates, whichever is earlier.

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, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13436 Filed 5–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–012]

Koch Gateway Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

May 16, 1997.

Take notice that on May 13, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet, to be effective May 1, 1997:

Eighth Revised Sheet No. 29

Koch states that this tariff sheet reflects the necessary reporting requirements as ordered by the Commission for a specific negotiated rate transaction.

Koch states that a copy of this filing is being served upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protest must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13443 Filed 5–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–013]

Koch Gateway Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

May 16, 1997.

Take notice that on May 13, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet in to be effective April 1, 1997:

Seventh Revised Sheet No. 29

Koch states that this tariff sheet reflects that Sonat Gas Marketing has re-negotiated to a lower volumetric commitment for parking under a previously approved negotiated rate transaction.

Koch also states that this filing has been served upon all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protest must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13444 Filed 5–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL95–3–000]

MidAmerican Energy Company (Formerly Midwest Power Systems Inc; Order Clarifying Filing Requirements for Changes in Depreciation Rates for Accounting Purposes, Dismissing Petition for Declaratory Order, and Providing Amnesty Period

May 15, 1997.

On October 14, 1994, Midwest Power, a division of Midwest Power Systems Inc. (Midwest Power or Applicant), filed a request for declaratory order authorizing it to reduce its annual composite rate of depreciation from 3.54 percent to 3.49 percent.[1] We will dismiss the petition as moot for the reasons given below.

We also take this opportunity to clarify our order, issued April 19, 1994, in *Midwest Power Systems Inc.*, 67 FERC ¶ 61,076 (1994) (*Midwest Power*), which noted that the clear provisions of section 302(a) of the Federal Power Act, 16 U.S.C. § 825a(a) (1994), require public utilities and licensees to file for this Commission's approval proposed depreciation rate changes for accounting purposes.

Nothwithstanding the clear language of section 302(a), there apparently has been some confusion in the industry as to the appropriate filing requirements. Accordingly, we will not require public utilities and licensees to file for formal approval of depreciation rate changes for accounting purposes where the depreciation rate changes were based on sound depreciation accounting practices and implemented prior to April 19, 1994.

In addition, for changes in depreciation rates for accounting purposes implemented on or after April 19, 1994, and prior to the date of publication of this order in the **Federal Register,** we will accord public utilities and licensees an amnesty period extending to and including December 31, 1997, to make the required filings to change their depreciation rates for accounting purposes.[2] We also clarify

[1] By order issued June 22, 1995, the Commission authorized the merger of Midwest Power and Iowa-Illinois Gas and Electric Company. MidAmerican Energy Company is the surviving corporation. *See* Midwest Power Systems, Inc. and Iowa-Illinois Gas and Electric Company, 71 FERC ¶ 61,386 (1995).

[2] For depreciation rate changes for accounting purposes that are implemented on or after the date of publication of this order in the **Federal Register**, public utilities and licensees must receive

Continued

that requests for depreciation rate changes for accounting purposes may be made under Rule 204 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.204 (1996), which does not require payment of a filing fee.

Background

In an October 20, 1993 letter, Midwest Power informed the Commission that it had reduced its annual composite rate of depreciation for accounting purposes from 3.54 percent to 3.49 percent, effective January 1, 1993, resulting in a reduction in its annual depreciation expense of just over $1 million. (Midwest Power did not reflect this change in its wholesale and retail electric rates.)

In an unpublished January 4, 1994 letter order, the Chief Accountant notified Midwest Power that it was ''inappropriate for [Midwest Power] to reduce its depreciation rates for accounting purposes without a corresponding change in the depreciation rates embedded in its wholesale and retail electric rates.''

On February 1, 1994, Midwest Power filed a request for rehearing of the January 4, 1994 letter order. On April 19, 1994, in *Midwest Power*, the Commission denied Applicant's request for rehearing, reasoning, in part, as follows:

> Midwest Power did not seek prior approval from the Commission [under section 302(a) of the FPA] before changing its depreciation rates, nor has it sought approval retroactively. It merely gave notice of its change in depreciation rates, and only after the fact. Midwest Power's course of action here is inconsistent with the applicable statutory requirements, and is also contrary to the Commission's duty under the Federal Power Act to review the adequacy of depreciation rates and depreciation reserves.

67 FERC at 61,209.[3]

The Commission found that Midwest Power should have submitted a formal request to the Commission asking for approval of its proposed change to its depreciation rate so that the Commission would have an opportunity to review the proposal in terms of whether it was consistent with the applicable statutory provisions. *Id.* The Commission outlined courses of action that Midwest Power could follow to change its depreciation rates:

> The most common vehicle for a proposed change in depreciation rates is as part of a filing of proposed revised electric rates; such a filing allows a comprehensive examination of a utility's cost of providing service, including the appropriate amounts of depreciation. As an alternative, a utility could file a request for a declaratory order asking for approval of its proposed revised depreciation rates.

Id.

In accordance with *Midwest Power*, Applicant filed the instant request for declaratory order seeking approval of its depreciation rate change.

Notice of Midwest Power's filing was published in the **Federal Register**, 59 FR 55,472 (1994), with comments, protests or interventions due on or before November 16, 1994. On November 14, 1994, the Iowa Utilities Board (Iowa Board) filed a notice of intervention, raising no substantive issues.

Discussion

A. Procedural Matter

Under Rule 214 of the Commission's Rules of Practice and Procedure,[4] the notice of intervention of the Iowa Board serves to make it a party to this proceeding.

B. Depreciation Rate Changes for Accounting Purposes Made Prior to April 19, 1994

As noted above, we believe that it is appropriate to accept all depreciation rate changes for accounting purposes made by public utilities and licensees prior to April 19, 1994 that were based on sound depreciation accounting practices.[5]

Because Midwest Power's depreciation rate change for accounting purposes was effective prior to Midwest Power, and was based on sound depreciation accounting practices, we will dismiss Midwest Power's request for declaratory order as moot.

C. Depreciation Rate Changes for Accounting Purposes Made on or After April 19, 1994

While Midwest Power clarified section 302(a)'s requirement that public utilities and licensees obtain formal Commission approval of depreciation rate changes for accounting purposes, we have found, as a result of audits conducted by the Office of the Chief Accountant, that several public utilities have recently revised their depreciation rates for accounting purposes without obtaining Commission approval. In most cases, these public utilities have obtained state regulatory commission approval for the depreciation rate changes.[6] We find it appropriate to offer public utilities and licensees an amnesty period through the end of the year, *i.e.*, on or before December 31, 1997, to file for this Commission's approval of depreciation rate changes for accounting purposes implemented on or after April 19, 1994 and prior to the date of publication of this order in the **Federal Register**.[7] These depreciation rate change filing should include supporting depreciation studies, copies of relevant state commission orders or approvals, and explanatory statements of the reasons for and effects of the proposed changes.[8]

D. Filings Under Rule 204

Additionally, while we stated in Midwest Power that utilities could make a request for approval of proposed depreciation rate changes for accounting purposes by means of a petition for declaratory order under Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.207 (1996), we clarify that public utilities and licensees are not required to file such petitions and incur the filing fees associated with them. Instead, we will allow public utilities and licensees to request approval of proposed depreciation rate changes for accounting purposes by means of an application under Rule 204 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.204 (1996), which does not require payment of a filing fee.

The Commission Orders

(A) Midwest Power's request for a declaratory order is hereby dismissed as moot, as discussed in the body of this order.

(B) Acceptance of depreciation rate changes for accounting purposes is

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Commission approval prior to changing their depreciation rates.

[3] Section 302(a) of the Federal Power Act states in pertinent part:

> The Commission may * * * by order fix, the proper and adequate rates of depreciation of the several classes of property of each licensee and public utility. Each licensee and public utility shall conform its depreciation accounts to the rates so ascertained, determined, and fixed. The licensees and public utilities subject to the jurisdiction of the Commission shall not * * * charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the commission

See 16 U.S.C. § 825a(a) (1994).

[4] 18 CFR 385.214 (1996).

[5] *See generally* Barton Village, Inc., *et al.* v. Citizens Utilities Co., 63 FERC ¶ 61,329 AT 63, 189–90 (1993), *reh'g denied*, 68 FERC ¶ 61,005 (1994), *reh'g denied*, 73 FERC ¶ 61,303 (1995), *aff'd in relevant part*, No. 96–1049 (D.C. Cir. Dec. 11, 1996) (unpublished opinion).

[6] We emphasize that utilities and licensees cannot charge to operating expenses any depreciation charges other than those prescribed by the Commission. *See* 16 U.S.C. § 825a(a) (1994).

[7] *See supra* note 2 (addressing changes implemented on or after date of publication in **Federal Register**).

[8] It is our expectation that the Office of the Chief Accountant will process uncontested requests for approval of proposed depreciation rate changes for accounting purposes under delegated authority, unless the requests involve unique, or controversial proposals. 18 CFR § 375.303 (1996).

hereby granted to public utilities and licensees for depreciation rate changes effective before April 19, 1994, as discussed in the body of this order.

(C) Public utilities and licensees are hereby granted until December 31, 1997, to file for Commission approval of depreciation rate changes for accounting purposes implemented on or after April 19, 1994 and prior to the date of publication of this order in the Federal Register, as discussed in the body of this order.

(D) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

(E) The Secretary shall promptly serve copies of this order on all State commissions, as defined in section 3(15) of the Federal Power Act.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13411 Filed 5–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2672–000]

New York State Electric and Gas Corporation; Notice of Filing

May 16, 1997.

Take notice that on April 24, 1997, New York State Electric & Gas Corporation (NYSEG), filed three Firm and one Non-Firm Service Agreement between NYSEG and New York State Electric & Gas Corporation, (Customer). The Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on January 29, 1997 with revised sheets effective on February 7, 1997, in Docket No. OA96–195–000 and ER96–2438–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date: April 1, 1997 for the April 1, NYSEG Firm Service Agreement which covers the service period April 1, 1997 through April 12, 1997; April 13, 1997 for the April 13, 1997, NYSEG Firm Service Agreement which covers the service period April 13, 1997 through April 26, 1997; April 27, 1997 for the April 17, 1997, NYSEG Firm Service Agreement which covers the service period April 27, 1997 through April 30, 1997; and April 30, 1997 for the April 17, 1997, NYSEG Firm Service Agreement which covers the service period April 30, 1997 through October 31, 1997. NYSEG also requests that the Commission approve the termination of the above-referenced firm Service Agreements as of the termination date set forth in each such agreement without the need for filing a separate notice of termination pursuant to the Commissions rules. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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 May 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the 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. 97–13435 Filed 5–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT97–8–000]

Northwest Pipeline Corporation; Notice of Filing

May 16, 1997.

Take notice that on May 8, 1997, Northwest Pipeline Corporation (Northwest) tendered for filing (1) Its revised Statement of Standards of Conduct related to pipelines with marketing affiliates as required by Order Nos. 497 et seq. and Order Nos. 566 et seq., and (2) Sixth Revised Sheet No. 297 of its FERC Gas Tariff, Third Revised Volume No. 1, to become effective June 8, 1997.

Northwest states that its Standards of Conduct filing is made pursuant to Section 161.3(i) of the Commission's regulations. Northwest is updating its Statement of Standards of Conduct filed February 2, 1990 in Docket Nos. MG88–52 and MT88–11, et al. to incorporate the relevant regulations from the Commission's Order Nos. 566, et seq.

Northwest states that Sheet No. 297 is revised to remove Transco Gas Marketing Company as a marketing affiliate of Northwest.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13440 Filed 5–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–514–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

May 16, 1997.

Take notice that on May 9, 1997, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in the above docket, a request pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, and 157.211) for authorization to construct and operate a new delivery point for service to Maytag Cleveland Cooking Products (Maytag), under Southerns blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Southern proposes to construct, install and operate a meter station consisting of one 3-inch orifice meter and other appurtenant facilities. Southern states that it will own and operate the meter station as part of its pipeline system. Southern states that the Station will designated by Southern as

the ''Maytag Meter Station'' (Point Code 790500). Southern proposes to construct and operate the facilities in order to provide transportation service to Maytag at a new delivery point for service at approximately Mile Post 19.6 on Southern 12'' Cleveland Branch Line in Bradley County, Tennessee.

The estimated cost of the construction and installation of the facilities is approximately $154,300. Maytag has complied with all of the requirements under Section 36 of the General Terms and Conditions of Southerns FERC Gas Tariff for the installation of the direct delivery connection by Southern and will reimburse Southern for the cost of constructing and installing the proposed facilities.

Southern states that it will transport gas on behalf of Maytag under its Rate Schedule IT. Southern states that the installation of the proposed facilities will have no adverse effect on its ability to provide its firm deliveries.

Any person or the Commission staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commissions Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the National Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity is deemed to be authorized effective on 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. 97–13439 Filed 5–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–258–001]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1997.

Take notice that on May 12, 1997, Williams Natural Gas Company (WNG) filed a request for a stay of the Commission's April 30, 1997 order in the above-captioned docket.

WNG states that on February 24, 1997, it filed tariff sheets to establish a pooling service on its system to be effective May, 1997. This pooling service was intended to meet the standards proposed by the Gas Industry Standards Board (GISB) and adopted by the Commission in Order No. 587. On April 30, 1997, the Commission issued an order requiring substantial modifications to the service proposed by WNG. Those modifications will require significant computer system changes; therefore, WNG states that it is unable to implement the pooling service with all of the changes required by the April 30 order to be effective May 1, 1997.

WNG states that it believes the order approved April 30 reflects a significant misunderstanding of the mechanics of WNG's pooling proposal and the underlying operational considerations involved. Therefore, WNG respectfully requests that the Commission (1) Stay the effectiveness of the April 30 order pending the results of a technical conference; (2) convene a technical conference to permit WNG to explain fully the operation of its proposed pooling service and the effects of modifying the proposal as set forth in the April 30 order; and (3) modify the order based on the outcome of the technical conference.

Alternatively, if the Commission determines that WNG must file revised tariff sheets to implement pooling on May 1, WNG requests that it be permitted to implement the pooling program proposed in its filing with those modifications required by the April 30 order which it can implement by May 1. Accordingly, WNG tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, to be effective May 1, 1997.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13442 Filed 5–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG95–87–000, et al.]

Entergy Power Marketing Corp., et al.; Electric Rate and Corporate Regulation Filings

May 15, 1997.

Take notice that the following filings have been made with the Commission:

1. Entergy Power Marketing Corp.

[Docket No. EG95–87–000]

Take notice that on May 6, 1997, pursuant to Section 365.7 of the Commission's regulations, 18 CFR 365.7, Entergy Power Marketing Corp. filed notification that it surrenders its status as an exempt wholesale generator under section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

2. TermoEmcali I. S.C.A. E.S.P.

[Docket No. EG97–44–000]

On May 9, 1997, TermoEmcali I. S.C.A. E.S.P. (TermoEmcali), with its address c/o International Generating Company, Inc., One Bowdoin Square, Boston, MA 02114, filed with the Federal Energy Regulatory Commission (FERC or the Commission) an amended application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

TermoEmcali is a Colombian company that will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities to be located in Colombia. The eligible facilities will consist of an approximately 233 MW gas fired electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: May 30, 1997, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. JMC Cauca Valley, Inc.

[Docket No. EG97–45–000]

On May 9, 1997, JMC Cauca Valley, Inc. (JMCV) with its address c/o International Generating Company, Inc., One Bowdoin Square, Boston, MA 02114, filed with the Federal Energy Regulatory Commission (FERC or the Commission) an amended application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

JMCV is a Cayman Islands company that will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities to be located in Colombia. The eligible facilities will consist of an approximately 233 MW gas fired electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: May 30, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. PacificCorp

[Docket No. ER97–2093–000]

Take notice that on May 2, 1997, PacificCorp tendered for filing an amendment in the above-referenced docket.

Comment date: May 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Public Service Company

[Docket No. ER97–2101–000]

Take notice that on May 1, 1997, Southwestern Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Service, Inc.

[Docket No. ER97–2333–000]

Take notice that on May 2, 1997, Cinergy Services, Inc. tendered for filing a Notice of Withdrawal in the above-referenced docket.

Comment date: May 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Quark Power L.L.C.

[Docket No. ER97–2374–000]

Take notice that on April 21, 1997, Quark Power L.L.C. tendered for filing an amendment in the above-referenced docket.

Comment date: May 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER97–2655–000]

Take notice that on April 23, 1997, Southern California Edison Company (Edison) tendered for filing a Service Agreement (Service Agreement) with the Bonneville Power Administration for firm Point-to-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff) filed in compliance with FERC Order No. 888, and a Notice of Cancellation of Service agreement No. 75 under FERC Electric Tariff, Original volume No. 4.

Edison filed the executed Service Agreement with the Commission in compliance with applicable Commission regulations. Edison also submitted a revised Sheet No. 152 (Attachment E) to the Tariff, which is an updated lists of all current subscribers. Edison requests waiver of the Commission's notice requirements to permit an effective date of April 24, 1997 for Attachment E, and to allow the Service Agreement to become effective and terminate according to its terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. San Diego Gas & Electric Company

[Docket No. ER97–2730–000]

Take notice that on April 28, 1997, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, pursuant to, Service Agreements (Service Agreements) with the following entities for Point-To-Point Transmission Service under SDG&E's Open Access Transmission Tariff (Tariff) filed in compliance with FERC No. 888:

1. Cenerprise, Inc.
2. Cinergy Services, Inc.
3. Delhi Energy Services, Inc.
4. Electric Clearinghouse, Inc.
5. Equitable Power Services Company
6. Idaho Power Company
7. Intercoast Power Marketing
8. LG&E Power Marketing

SDG&E filed the executed Service Agreements with the Commission in compliance with applicable Commission regulations. SDG&E also provided Sheet No. 114 (Attachment E) to the Tariff, which is a list of current subscribers. SDG&E requests waiver of the Commission's notice requirement to permit an effective date of April 1, 1997 for Attachment E, and allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Illinois Power Company

[Docket No. ER97–2793–000]

Take notice that on May 1, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Archer Daniels Midland Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 26, 1997.

Comment date: May 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Illinois Power Company

[Docket No. ER97–2794–000]

Take notice that on May 1, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which CMS Marketing, Services and Trading Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 1, 1997.

Comment date: May 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Illinois Power Company

[Docket No. ER97–2795–000]

Take notice that on May 1, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Carolina Power & Light Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 11, 1997.

Comment date: May 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Illinois Power Company

[Docket No. ER97–2796–000]

Take notice that on May 1, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Wisconsin Public Power Company will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 1, 1997.

Comment date: May 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER97–2801–000]

Take notice that PacifiCorp, on May 1, 1997, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a proposed PacifiCorp FERC Electric Tariff, Original Volume No. 12 (Tariff).

PacifiCorp requests that the Commission accept the Tariff for filing and assign an effective date of July 1, 1997.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: May 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Illinova Power Marketing, Inc.

[Docket No. ER97–2833–000]

Take notice that on May 2, 1997, Illinova Energy Partners, Inc. tendered for filing a Notice of Succession stating that Illinova Power Marketing, Inc. has changed its name to Illinova Energy Partners, Inc., and is adopting Illinova Power Marketing, Inc.'s tariff currently on file with the Commission, under FERC Rate Schedule No. 1 of Illinova Power Marketing and Tariff No. 1.

Comment date: May 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Union Electric Company

[Docket No. ER97–30–000]

Take notice that on April 27, 1997, Union Electric Company filed an application, under § 204 of the Federal Power Act, seeking authorization to issue short-term, unsecured promissory notes, from time to time, in an aggregate principal amount of not more than $600 million outstanding at any one time.

Comment date: June 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California

[Docket No. OA97–582–000]

Take notice that on April 29, 1997, the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California tendered for filing a Petition for Partial Waiver of the Requirements of Orders No. 888 and 889.

Comment date: May 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. 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, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. 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. 97–13433 Filed 5–21–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–809–000, CP96–810–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Maritimes Phase II Project and Request for Comments on Environmental Issues

May 16, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of about 350 miles of natural gas pipeline and compression called the Maritimes Phase II Project.[1] The facilities consist of 196 miles of 24- and 30-inch-diameter mainline between Westbrook and the Canadian border at Woodland, 149.9 miles of 4- to 16-inch diameter laterals, and 31,160 horsepower (hp) of compression. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

We are asking a number of Federal and state agencies to indicate whether they wish to cooperate with us in the preparation of the EIS. These agencies are listed in appendix 1 and may choose to participate once they have evaluated each proposal relative to their agencies' responsibilities.[2]

Summary of the Proposed Project

Maritimes & Northeast Pipeline, L.L.C. (Maritimes) wants to provide markets in Maine and other parts of New England with access to new natural gas supplies from Canada which are being developed for the Sable Offshore Energy Project. The proposed facilities would have a design delivery capacity of 440,000 million British thermal units per day and would provide natural gas supply to four local distribution companies, one electric company, nine pulp and paper companies, and three natural gas marketing companies. Maritime seeks authority to construct and operate:

1998 Facilities

- 17.5 miles of 24-inch-diameter mainline in Cumberland County, Maine;
- 12.1 miles of 16-inch-diameter lateral (Cousins Island Lateral) in Cumberland County, Maine; and
- associated aboveground facilities, including a meter station, pig launcher/receiver, and block valves.

1999 Facilities

- 176.7 miles of 24-inch-diameter mainline in Androscoggin, Sagadahoc, Kennebec, Lincoln, Knox, Waldo, Hancock, Penobscot, and Washington Counties, Maine;
- 1.8 miles of 30-inch-diameter mainline in Washington County, Maine;
- 31,160 hp of compression at two compressor stations on the mainline (compressor Station 2 in Richmond, Sagadahoc County and Compressor Station 1 in Baileyville, Washington County, Maine);
- 41.1 miles 4- to 8-inch-diameter lateral pipeline (the Skowhegan Lateral

[1] Maritimes & Northeast Pipeline, L.L.C.s application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commissions regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commissions Public Reference and Files Maintenance Branch, 888 First Street NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

in Kennebec and Somerset Counties, Maine);

- 8.6 miles of 6-inch-diameter lateral (the Bucksport Lateral in Penobscot and Hancock Counties, Maine);
- 83.9 miles of 4- to 10-inch diameter lateral (the Old Town/Millinocket Lateral in Penobscot County, Maine);
- 4.2 miles of 4-inch-diameter lateral (Woodland Lateral in Washington County, Maine); and
- associated aboveground facilities, including meter stations, pig launcher/receivers, and block valves.

The general location of the project facilities is shown in figure 1 (appendix 2). If you are interested in obtaining detailed maps of a specific portion of the project, please use the request form provided (appendix 4). For procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

Maritimes would use a 75-foot-wide construction right-of-way to install the mainline and Cousins Island Lateral. A 65-foot-wide construction right-of-way would be used to install the other laterals. About 47 percent of the mainline and 67 percent of the laterals would be constructed adjacent to or within existing rights-of-way. Construction of the pipeline rights-of-ways would require about 2,977.5 acres of land. We estimate that about an additional 312 acres would be needed for extra work areas for pipe installation at roads, railroads, and wider rivers and wetlands. However, this is only our estimate and workspace sizes and locations have not yet been identified by the applicant.

Following construction, all disturbed areas would be restored and a permanent right-of-way of 50 feet would be maintained for operation of the mainline and Cousins Island Lateral. The other laterals would be maintained on a 40-foot-wide permanent right-of-way. All land used for temporary construction right-of-way and extra work areas would revert to previous uses entirely. Some land uses on the permanent right-of-way would also be allowed to continue following construction.

Maritimes would acquire about 20 acres for Compressor Station 1 and about 100 acres for Compressor Station 2. Actual construction and operation of these facilities would disturb only a portion of these sites. Other above ground facilities would be on sites of less than 1 acre, either within or immediately adjacent to the permanent right-of-way.

Facilities Included in Related EISs

Figure 2 (appendix 2) shows the proposed facilities for related natural gas projects which the Commission staff has either prepared or is preparing other environmental impact statements.

On February 10, 1997, Maritimes and Portland Natural Gas Transmission Systems (PNGTS) filed an application in Docket No. CP97–238–000 to construct and operate the PNGTS/Maritimes Joint Facilities Project (Joint Facilities Project) between Dracut, Massachusetts and Westbrook, Maine.

The Commission staff has published a DEIS on April 25, 1997 which analyzes the 66.1 miles which constitute the Phase I Joint Facilities Project between Dracut, Massachusetts and Wells, Maine. Comments on the project are due June 9, 1997.

The PNGTS and PNGTS/Maritimes Phase II Joint Facilities Project DEIS that is also under preparation includes all joint facilities between Wells and Westbrook, Maine, including the Westbrook Lateral (Phase II Joint Facilities), and all facilities between Westbrook and the U.S./Canada border at Pittsburgh, New Hampshire, including laterals.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Public safety.
- Land use.
- Cultural resources.
- Air quality and noise.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in a Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for these proceedings. A 45-day comment period will be allowed for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary before issuing a Final EIS. The Final EIS will include our responses to the comments received.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities, interventions received, and the environmental information provided by Maritimes. This preliminary list of issues may be changed based on your comments and our analysis.

- Effects on watersheds, including Floods Pond (Bangor Water District), Hatcase Pond (Brewer Water District), and Sheetscot River;
- Clearing of about 2,150 acres of forest;
- Waterbody crossings over 100 feet wide including Casco Bay, Androscoggin River, Sabattus River, Kennebec River (3 crossings), Sheepscot River, Penobscot River (6 crossings), West Branch Union River, St. Croix River, Sebasticook River, Passadumkeag River, West Branch Penobscot River, tributary to the West Branch Sheepscot River, Marsh Stream, Jordan Brook, Otter Stream, and Trout Brook;
- 16 river segments listed on both national and state inventories (Abagadasset, West Branch Sheepscot, Sheepscot, St. George, West Branch Union, Narragaugus, and Machias Rivers), or only on state inventories (St. Croix, West Branch Machias, Middle Branch Union, Kennebec, Penobscot, Passadumkeag, and Sebasticook Rivers; and Millinocket and Marsh Streams);
- 150 coldwater fisheries crossed;
- Effect on anadromous fisheries (including Atlantic salmon), and waterfowl and wildlife habitat (including Sunkhaze Meadows National Wildlife Refuge);

- 2 federally listed species (bald eagle and shortnose sturgeon);
- 11 gravel pits adjacent to the right-of-way;
- A total of 44.7 miles of wetlands crossed;
- 112 residences potentially within 100 feet of the pipeline centerline;
- Crossing of tribal land (Penobscot Indian Nation) and impact on fishing rights (Passamaquoddy Natural Resources Committee);
- Crossing of recreational areas including the Katahdin Scout Reservation; and
- Alterntive routes making greater use of existing rights-of-way such as near Richmond, Maine and the mainline crossing of the Kennebec River; and alternate alignments on private property.

Maritimes has stated that there are no nonjurisdictional facilities that would be built as a direct result of this project.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes or compressor station sites), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address two copies of your comments to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Reference Docket No. CP96–089–000; and
- Mail your comments so that they will be received in Washington, DC on or before June 20, 1997.

In addition to sending written comments, you may attend public scoping meetings that we will conduct at three locations. Meetings will be held at the following times and locations:

Date	Time	Location
Tuesday, June 3, 1997	7:00 p.m	Woodland Elementary School, Fourth Avenue, Woodland (Baileyville), Maine.
Wednesday, June 4, 1997	7:00 p.m	Hichborn Middle School, Cross Street, Howland, Maine.
Thursday, June 5, 1997	7:00 p.m	Richmond High School, Route 197, Richmond, Maine.

The purpose of the scoping meetings is to obtain input from state and local governments and from the public. Federal agencies have formal channels for input into the Federal process (including separate meetings where appropriate) on an interagency basis. Federal agencies are expected to transmit their comments directly to the FERC and not use the scoping meetings for this purpose. Local agencies are requested to provide information on other plans and projects which might conflict with, or have cumulative effects, when considered in combination with the Maritimes Phase II Project.

Maritimes will present a description of their proposals at the scoping meeting. Interested groups and individuals encouraged to attend the meetings and present oral comments on the environmental issues which they believe should be addressed in the Draft EIS.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents such as data requests and filings by other intervenors. We will provide our EIS to anyone who follows the instructions which appear later in this NOI. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested and/or potentially affected by the proposed project. It is also being sent to all potential right-of-way grantors (i.e., landowners whose property would be crossed) to solicit focused comments regarding environmental considerations related to the proposed project.

If you do not want to send comments at this time but still want to remain on our mailing list and receive a copy of our DEIS, please return the Information request (appendix 4). If you do not send comments on the NOI *or* return the Information Request, you will be taken off the mailing list.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13438 Filed 5–21–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5828–7]

National Drinking Water Advisory Council Source Water Protection Working Group; Notice of Open Meeting

Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of Source Water Protection Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*) will be held on June 2, 1997 from 9:00 a.m. to 5:00 p.m. and June 3, 1997 from 8:30–4:00 at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington D.C. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to provide recommendations and advice to the National Drinking Water Advisory Council on the coordinated implementation of the source water assessment and protection provisions of the 1996 Safe Drinking Water Act. The meeting is open to the pubic to observe.The working group members are meeting to analyze relevant issues and facts related to draft guidance available for public comment. Therefore, no statements will be taken from the public at this meeting. For more information, please contact, Beth Hall, Source Water Protection Working Group, U.S. EPA,

Office of Ground Water and Drinking Water, 4606, 401 M Street SW., Washington, D.C. 20460. The telephone number is Area Code (202) 260–5553. The e-mail address is hall.beth@epamail.epa.gov.

Dated: May 16, 1997.

Charlene Shaw,

Designated Federal Official, National Drinking Water Advisory Council.

[FR Doc. 97–13486 Filed 5–21–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5828–8]

Characterization of Municipal Solid Waste in the United States: 1996 Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In recent years, community officials and the general pubic have increased their attention to the waste generated by households, institutions, and commercial businesses. They have used information about municipal solid waste (MSW) to plan for programs to reduce and recycle this waste and to properly dispose of the remainder. The ''Characterization of Municipal Solid Waste in the United States, 1960 to 2000'' report was first prepared by EPA in 1986 in order to determine the amounts of waste generated, recovered, and discarded in the nation, and to project amounts of waste which will be managed in the future. The report has been updated five times since its initial publication in 1986. Planners nation-wide use this special study to estimate the amount and types of MSW that may be generated in their communities, and thus are able to plan more effectively for the management of the wastes generated, recovered, and/or discarded.

The Characterization of Municipal Solid Waste in the United States: 1996 Update report is now available. The 1996 Update is similar to the 1995 Update, but it contains updated information on the types and amounts of municipal solid waste generated, recovered, and discarded in the United States through 1995. Some new informational categories and also included in the 1996 Update. These include several case studies that illustrate the impact of source reduction on different product categories, a section on the infrastructure for MSW management, and revised projections for MSW generation and management through 2010, including three possible scenarios for recovery.

Finally, due to sustained interest in tacking national generation, recovery, and discard rates for MSW, EPA plans to continue provided annual updates of this Report as a service to its stakeholders from State and local governments, industry, environmental groups, and the public.

DATES: May 22, 1997.

FOR FURTHER INFORMATION CONTACT: A paper copy of Characterization of Municipal Solid Waste in the United States: 1996 Update (EPA Publication Number EPA530–97–R–015) or the Report's Executive Summary (EPA Publication Number EPA530–S–97–015) may be obtained by calling the RCRA Hotline at 1–800–424–9346. The Report is also available in electronic format on the Internet System through the EPA Public Access Server at www.epa.gov.

Dated: April 30, 1997.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 97–13478 Filed 5–21–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5828–1]

Notice of Proposed Settlement

SUMMARY: Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has offered to a potentially responsible party an Administrative Order on Consent to settle claims for past and future removal actions at the Old ATC Refinery in Wilmington, New Hanover County, North Carolina. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the Agreement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, 61 Forsyth St., Atlanta, GA 30303, 404–562–8887.

Written comments may be submitted to Ms. Batchelor within 30 days of the date of publication.

Dated: April 25, 1997.

Anita Davis,

Acting Chief, Programs Services Branch, Waste Management Division.

[FR Doc. 97–13485 Filed 5–21–97; 8:45 am]

BILLING CODE 6560–50–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Committee of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES AND PLACE: June 9, 1997. The White House Conference Center, Truman Room, Third Floor, 726 Jackson Place, NW., Washington, DC 20500.

TYPE OF MEETING: Open.

PROPOSED SCHEDULE AND AGENDA: The PCAST will meet in an open session during the morning of Monday, June 9, 1997, at approximately 10:00 a.m. The morning session will focus on Congressional views on science and technology (S&T) and the FY 1998 Budget. This session will end at approximately 12:00 Noon.

The Committee will reconvene in open session on Monday afternoon, June 9, 1997, at approximately 1:30 p.m. The afternoon session will focus on 1997 PCAST Studies, discussions on the Competitiveness Policy Council Report, ''Investing in Innovation: A Project Assessing Federal Technology Policies and Programs,'' and the Carnegie Commission Report, ''Science and Technology and the President.'' There will also be a general discussion among Committee members and other Executive Office staff about current S&T activities of the Office of Science and Technology Policy (OSTP) and the National Science and Technology Council (NSTC).

FOR FURTHER INFORMATION: For information regarding time, place, and agenda, please call Jeanie Hall at (202) 456–6100 prior to 3:00 p.m. on Friday, June 6, 1997. Other questions may be directed to Angela Phillips Diaz, Executive Secretary for PCAST, or Yolanda Comedy at (202) 456–6100. The agenda will also be posted on the PCAST Home Page located at http://www.whitehouse.gov/WH/EOP/OSTP/

html/OSTP—Home.html. Please note that public seating for this meeting is limited, and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was established on November 23, 1993, by Executive Order 12882, as amended, and continued through September 30, 1997, by Executive Order 12974. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by John H. Gibbons, Assistant to the President for Science and Technology, and by John Young, former President and CEO of Hewlett-Packard Company.

Dated: May 16, 1997.

Barbara Ann Ferguson,

Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 97–13398 Filed 5–21–97; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget (OMB) for Emergency Review and Approval

May 19, 1997.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3507. Please note that the Commission has requested emergency review and approval of this collection by June 6, 1997, under the provisions of 5 CFR Section 1320.13.

The Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 4, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236, NEOB, Washington, D.C. 20503, (202) 395–0651 or via internet at fain__t@al.eop.gov, and to Judy Boley, Federal Communications Commission, (202) 418–0214 or via internet to jboley@fcc.gov.

Federal Communications Commission

Title: Federal-State Joint Board on Universal Service, CC Docket No. 96–45 (47 CFR 36.611–36.612 and 47 CFR Part 54).

Form No.: N/A

OMB Control No.: None.

Action: New Collections.

Respondents: Business or other for-profit entities; individuals or households; not-for-profit institutions; state, local or tribal government.

Estimated Annual Burden: 5,565,451 respondents; 3.1 hours per response (avg.); 1,784,220 hours total annual burden.

Frequency of Response: On occasion, annually, one-time requirements.

Needs and Uses: Congress directed the Commission to implement a new set of universal service support mechanisms that are explicit and sufficient to advance the universal service principles enumerated in Section 254 of the Telecommunications Act of 1996 and such other principles as the Commission believes are necessary and appropriate for the protection of the public interest, convenience and necessity, and are consistent with the Act. In the Report and Order issued in CC Docket No. 96–45, the Commission adopts rules that are designed to implement the universal service provisions of section 254. Specifically, the Order addresses: (1) universal service principles; (2) services eligible for support; (3) affordability; (4) carriers eligible for universal service support; (5) support mechanisms for rural, insular, and high cost areas; (6) support for low-income consumers; (7) support for schools, libraries, and health care providers; (8) interstate subscriber line charge and common line cost recovery; and (9) administration of support mechanisms. The reporting and recordkeeping requirements contained in CC Docket No. 96–45 are designed to implement Section 254 follow. The reporting and recordkeeping are necessary to ensure the integrity of the program.

Rule section/title (47 CFR)	Hours per response	Total annual burden
a. 36.611(a) & 36.612—Submission and Updating information to NECA	20	26,800
b. 54.101(c)—Demonstration of exceptional circumstances for toll-limitation grace period	50	100
c. 54.201(b)(c)—Submission of eligibility criteria	1	3,400
d. 54.201(d)(2)—Advertisement of services & charges	50	65,000
e. 54.205(a)—Advance notice of relinquishment of universal service	.5	50
f. 54.207(c)(1)—Submission of proposal for redefining a rural service area	125	6,250
g. 54.307(b)—Reporting of expenses & number of lines served.	2.5 (avg.)	4,100
h. 54.401(b) (1)–(2)—Submission of disconnection waiver request	2	100
i. 54.401(d)—Lifeline certification to the Administrator	1	1,300
j. 54.407(c)—Lifeline recordkeeping	80	104,000
k. 54.409 (a)–(b)—Consumer qualification for Lifeline	5 min.	440,000
l. 54.409(b)—Consumer notification of Lifeline discontinuance	5 min.	44,000
m. 54.418(b)—Link Up recordkeeping	80	104,000
n. 54.501(d)(4) & 54.516—Schools & Libraries recordkeeping	41 (avg.)	372,000
o. 54.504 (b)–(c), 54.507(d) & 54.509(a)—Description of services requested & certification	2	100,000
p. 54.601(b)(4) & 54.609(b)—Calculating support for health care providers	100	340,000

Rule section/title (47 CFR)	Hours per response	Total annual burden
q. 54.601(b)(3) & 54.619—Shared facility record-keeping	21 (avg.)	160,000
r. 54.607(b) (1)–(2)—Submission of proposed rural rate	3	150
s. 54.603(b)(1), 54.615 (c)–(d) & 54.623(d)—Description of services requested and certification	1	12,000
t. 54.619(d)—Submission of rural health care report	40	40
u. 54.701 (f)(1) & (f)(2)—Submission of annual report & CAM	40	40
v. 54.701(g)—Submission of quarterly report	10	40
w. 54.707—Submission of state commission designation	.25	850
Total annual burden hours		1,784,220

All the collections are necessary to implement the congressional mandate for universal service. The reporting and recordkeeping requirements are necessary to verify that the carriers and other respondents are eligible to receive universal service support.

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the burden estimates or any other aspect of the collection of information including suggestions for reducing the burden to the Federal Communications Commission, Performance Evaluation and Records Management, Paperwork Reduction Project, Washington, D.C. 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–13685 Filed 5–21–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–1019]

In the Matter of BellSouth Cellular and GTE Wireless, and AT&T Wireless Services, Inc., Request for a Notice of Violation or Revocation of License for AirCell, Inc. (Restricted Proceeding)

May 15, 1997.

On April 22, 1997, AT&T Wireless Services, Inc. (AT&T) filed a petition for Commission action under section 5.162 of the Commission's Rules to require AirCell, Inc. (AirCell) to abide by the terms of its experimental authorization and the Commission's Part 5 Rules, and on April 7, 1997, BellSouth Cellular Corp. (BSCC), GTE Wireless Products and Services (GTE), filed a petition for a Notice of Violation or Revocation of License.

AirCell holds an FCC authorization to operate an experimental radio station (Call Sign KI2XCS, File Number 5349-EX-MR–96).

Inasmuch as this is an adjudicative licensing proceeeding, it is restricted under the Commission's *ex parte* rules. *See* 47 CFR §§ 1.1202(d), 1.1208(c). Persons who desire to present material or comments with the Commission concerning this proceeding are advised to follow the procedures set forth in the Commission's *ex parte* rules for restricted proceedings. *See* 47 CFR § 11200 *et seq.*

For further information contact Paul Marrangoni at (202) 418–2425, Office of Engineering and Technology.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–13449 Filed 5–21–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be held on Monday, June 2, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Patricia Longus, Management Assistant of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 603, Rockville, Maryland 20852, (301) 594–1321.

In addition, if sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, the Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6665 ext 1055 no later than May 27, 1997.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to AHCPR activities to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary.

These members are: Richard E. Behrman, M.D., J.D.; Helen Darling, M.A.; Nancy Wilson Dickey, M.D.; Jose Julio Escarce, M.D., Ph.D.; Ada Sue Hinshaw, Ph.D., R.N.; Sharon C. Kiely, M.D.; Jeffrey P. Koplan, M.D., M.P.H.; Robert M. Krughoff, J.D.; W. David Leak, M.D.; Harold S. Luft, Ph.D.; Woodrow A. Myers, Jr., M.D., M.B.A.; Martin Paris, M.D., M.P.H.; E. Walter J. McNerney, M.H.A.; Edward P. Perrin, Ph.D.; Stephen M. Shortell, Ph.D.; and W. Leigh Thompson, M.D., Ph.D.

There also are Federal ex-officio members. These members are: Administrator, Substance Abuse and Mental Health Services Administration; Director, National Institutes of Health; Director, Centers for Disease Control and Prevention; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Monday, June 2, 1997, the meeting will begin at 9:00 a.m. with the call to order by the Council Chairman. The Administrator, AHCPR, will update the status of current Agency programs and initiatives. The Council will then discuss the Agency's role in quality, what steps are necessary for building and maintaining a vital health services research community, and how the Agency can best address emerging issues.

The meeting will adjourn at 4:00 p.m. Agenda items are subject to change as priorities dictate.

Dated: May 15, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–13451 Filed 5–21–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–10–97]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. AIDS Prevention and Surveillance Project Reports, (0920–0208)—Extension—CDC funds cooperative agreements for 65 HIV Prevention Projects (50 states, 6 cities, 7 territories, Washington, D.C., and Puerto Rico). The cooperative agreements support counseling, testing, referral, and partner notification programs conducted by official public health agencies of states, territories, and localities (project areas). HIV counseling and testing in STD clinics, Women's Health Centers, Drug Treatment Centers, and other health agencies has been described as a primary prevention strategy of the national HIV Prevention Program. These project areas have increased HIV counseling and testing activities to specifically reach more minorities and women of child bearing age.

CDC is responsible for monitoring and evaluating HIV prevention activities conducted under the cooperative agreement. Counseling and testing programs are a major component of the HIV Prevention Program. Without data to measure the impact of counseling and testing programs, priorities cannot be assessed and redirected to prevent further spread of the virus in the general population. CDC needs information from all project areas on the number of at-risk persons tested and the number positive for HIV. The HIV Counseling and Testing Report Form provides a simple yet complete means to collect this information. We are requesting a three year extension for this study. The total annual burden hours are 219.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Manual Form Project Areas	22	4	2	176
Scan Form Project Areas	43	4	0.25	43

2. Employee Vital Status Letter (0920–0035)—Extension—The employee vital status letter is an update of a letter originally approved by OMB in 1977 and last approved in 1994. The vital status letter is used for a type of study known as ''retrospective mortality.'' The retrospective mortality study involves the identification of a study population of present and former workers who were exposed to a toxic substance in the workplace that is suspected of causing a long term adverse health effect to the exposed workers. The adverse health effects may be identified by observing the cause specific mortality in the study population and comparing that to the expected mortality. The study populations are identified through employment records of past and present workers in given industries where the suspected toxins are found. In order to identify these deaths, it is necessary to determine the vital status (i.e., whether the individual is alive or deceased) of all members of the study population as of a given cut-off date and then obtain the medical certification of cause of death on all deceased members.

This letter is sent to study cohort members as a last resort. If the vital status of an individual cannot be determined from a number of available data sources (such as the National Death Index and the Social Security Administration), the letter is sent to determine if the respondent is deceased or alive—if deceased, the data and place of death is requested from next of kin. The total annual burden hours are 42.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Workers	252	1	.166	42

Dated: May 16, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–13430 Filed 5–21–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 746]

Preventing Alcohol-Exposed Pregnancies Among High-Risk Women in Special Settings; Notice of Availability of Funds for Fiscal Year 1997

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 funds for a cooperative agreement program for the identification of settings in which high proportions of childbearing-age women are at risk of an alcohol-exposed pregnancy, and for the pilot-testing of model intervention programs aimed at reducing their risk. Women at greatest risk of an alcohol-exposed pregnancy are those who are drinking at moderate to heavy levels (including binge drinking) and are planning for, or are at risk of, becoming pregnant.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the priority areas of Substance Abuse: Alcohol and Other Drugs, and Maternal and Infant Health. (To order a copy of ''Healthy People 2000,'' see section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Sections 301 and 317(k)(2) of Public Service Health Act (42 U.S.C. 241 and 247b(k)(2), as amended.

Smoke-Free Workplace

CDC strongly encourages all recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products. Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, nonprofit organizations, and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, community-based organizations and other public and private organizations, State and local health departments or their bona fide agents, and small, minority- and/or women-owned non-profit businesses are eligible for these cooperative agreements. Also eligible to apply are other non-profit health, family planning, and substance abuse treatment providers, managed care organizations, and federally recognized Indian tribal governments.

Note: Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

Availability of Funds

Approximately $900,000 will be available in FY 1997 to award up to 3 cooperative agreements. It is expected that the awards will range from $250,000 to $300,000. Projects will begin on or about September 30, 1997, and will be made for a 12-month budget period within a project period of up to 3 years. The funding estimate may vary and is subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1997 HHS Appropriations Act, which became effective October 1, 1996, expressly prohibits the use of 1997 appropriated funds for indirect or ''grass roots'' lobbying efforts that are designed to support or defeat legislation pending before State legislatures. This new law, Section 503 of Pub. L. No. 104–208, provides as follows:

Sec. 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, . . . except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Pub. L. No. 104–208 (September 30, 1996).

Definitions and Background

Definitions

An *alcohol-exposed pregnancy* is one in which a woman consumes moderate to heavy amounts of alcohol, or engages in binge drinking during the pregnancy. *Moderate* amounts of alcohol are defined as 7–13 drinks per week; *heavy* amounts of alcohol are defined as 14 or more drinks per week; and *binge* drinking is defined as 5 or more drinks on any one occasion. A woman who is at *high risk* for an alcohol-exposed pregnancy is one who engages in moderate to heavy alcohol use or binge drinking, is sexually active, and is not effectively practicing contraception. A *high-risk setting* is any site in which a large proportion of the women served in the site meet the above definition of high risk.

Background

Fetal Alcohol Syndrome (FAS) is one of the leading preventable causes of birth defects and developmental disabilities in the United States. In addition to FAS, which is caused by heavy prenatal alcohol use, studies have documented more subtle growth and neurodevelopmental deficits among

children whose mothers drank at lower levels (equivalent to seven drinks per week during pregnancy). Reported prevalence rates for alcohol use by women during pregnancy include 18 percent (National Institute of Drug Abuse (NIDA)) to 20 percent (National Center for Health Statistics (NCHS)) for any reported use; 1 percent for moderate-heavy use (7 drinks per week or greater) (Behavioral Risk Factor Surveillance System (BRFSS)); and 2 percent for binge drinking (5 or more drinks on any one occasion) (BRFSS). Reported rates of alcohol use for childbearing-age women in general include 45 percent for any reported use (NCHS); 5 percent for 7 or more drinks per week (BRFSS); and 11 percent for binge drinking (BRFSS).

Important risk factors associated with heavy alcohol use among childbearing-age women include use of tobacco and other drugs, co-existing psychiatric conditions, history of sexual or physical abuse during childhood and/or adulthood, and a previous alcohol-exposed pregnancy. CDC studies have found that the strongest predictor of alcohol use during pregnancy is the level of alcohol use prior to pregnancy. Women who were drinking 9 or more drinks per week before pregnancy were 5 times more likely to drink during pregnancy than those who were drinking 2 drinks per week or less prior to pregnancy. Other CDC studies using data from the NCHS and the BRFSS have identified additional socio-demographic and maternal characteristics associated with moderate-heavy alcohol use during pregnancy. These include, but are not limited to, women who: are age 35 years and older; are members of minority race-ethnicity groups; have an annual household income of $l0,000 or less; currently smoke; or receive no prenatal health care.

Previous CDC efforts have shown that collaboration among grantees, CDC program personnel, and experts external to CDC, has been successful in developing effective interventions that address complex behaviors. An essential strategy for preventing alcohol-exposed pregnancies among women who are heavy alcohol users is referral for alcohol treatment services. However, given the high relapse rate among problem drinkers (50 percent), such efforts must be coupled with strategies which address pregnancy postponement until the risk of prenatal alcohol use can be overcome. Among women who are drinking at moderate levels, but levels that could be hazardous if pregnant, a reduction in drinking level may be possible with simple advice and counseling from a health care provider. However, among both groups of women, family planning health education and services should be provided to facilitate postponement of pregnancy until the alcohol level is reduced.

Recent research has shown that brief interventions to facilitate reduction in alcohol use which incorporate assessment, feedback, consequences of behavior and self-help materials for goal setting and behavior change can reduce problem drinking among clients in health care settings. Other successful approaches have focused on creating conditions which assist clients in reducing their ambivalence about changing a health risk behavior, which results in a stronger commitment to change.

Studies in contraceptive decision making and in the promotion of condom use in the prevention of sexually transmitted diseases have employed a cognitive model, Theory of Reasoned Action (TRA), in designing successful behavior change interventions. Knowledge gained from studies employing these and other approaches may have important implications for the design of innovative interventions for assisting childbearing-age women to avoid alcohol use during pregnancy by engaging participants in a dual program which addresses high-risk drinking and pregnancy postponement.

Purpose

The purposes of this announcement are to:

A. Identify settings which have a high proportion of women who binge drink and/or drink alcohol at moderate to heavy levels and are at risk of pregnancy.

B. Develop, implement and evaluate interventions which assist binge drinkers and/or moderate to heavy drinkers in reducing their drinking below risk levels and actively engage all clients in a plan for pregnancy postponement until risk drinking or alcohol abuse problems have been addressed.

C. Disseminate, as appropriate, generalizable interventions for the prevention of alcohol-exposed pregnancies.

Settings in which high-risk populations may be accessed include Sexually Transmitted Disease (STD) clinics, Women, Infants, and Children (WIC) clinics, mental health programs, social services settings, drug and alcohol treatment centers, and correctional systems. In addition, hospitals with high prevalence rates of prenatal alcohol use among their obstetrical populations may constitute an important setting for identifying women at high risk for an alcohol-exposed pregnancy.

The intervention to be developed will include: (1) counseling regarding the consequences of alcohol use during pregnancy; (2) brief advice and counseling for moderate to heavy drinkers to reduce intake levels or referral to treatment options in the community for alcohol-dependent drinkers; and (3) reproductive health education regarding contraceptive methods, provision of contraceptive services, and client follow-up. Interventions will be designed to be delivered to high-risk clients in the clinic or agency setting by project personnel.

Program Requirements

The applicant must:

Identify two different high-risk settings in which epidemiologic and intervention activities will be conducted. Applicants must justify their choice of each high-risk setting with prevalence rates that demonstrate problem drinking among the target population. Each setting should document an annual population of at least 500 high-risk women. The applicant must implement and evaluate model interventions for preventing alcohol-exposed pregnancies in these two settings. Intervention demonstration activities must be conducted in a cohort of 50–100 high-risk women.

An affirmative response to the above requirement is required to qualify for the full objective review. This page should be included as the first page of the application and titled ''Program Requirements.''

Cooperative Activities

In conducting activities to achieve the purpose of this cooperative agreement, the recipient will be responsible for the activities under A. (Recipient Activities) below, and CDC will be responsible for activities under B. (CDC Activities) below:

A. Recipient Activities

1. Collaborate with other cooperative agreement recipients to:

a. Design study activities which include developing an epidemiologic survey and model interventions (including protocols) which will be implemented in the targeted populations.

b. Develop data collection instruments, study procedures, and an evaluation plan to determine the effectiveness of the interventions.

2. Implement an epidemiologic survey which characterizes the target

population in terms of the prevalence and patterns of alcohol use, prevalence of characteristics associated with heavy alcohol use, reproductive health status (e.g., parity, contraceptive practices, current sexual activity, fertility), alcohol treatment histories, and psychiatric co-morbidities.

3. Collect and analyze information that describes barriers to contraception and to alcohol abuse treatment among the target population including:

a. Knowledge, attitudes, and beliefs about alcohol use, contraception, and alcohol use during pregnancy;

b. Accessibility of services for contraception and dealing with alcohol abuse problems;

c. Peer group norms toward alcohol use and use of contraceptives; and

d. Sexual partner and family member attitudes toward contraception and alcohol use.

4. Implement a model intervention in the high-risk target sites, including quality assurance (QA) procedures to assure that protocols for piloted interventions are being properly implemented.

5. In Year 03 of the project, participate in a meeting with other funded sites to define the most promising approaches which should be incorporated into a common intervention protocol for possible testing in a randomized clinical trial.

6. Develop a manuscript describing the target populations chosen by the applicant and the results of the specific interventions tested by the individual applicant.

7. Collaborate with other funded study sites in developing a single manuscript collectively describing the various interventions piloted in the various high-risk settings by applicants funded under this cooperative agreement.

B. CDC Activities

CDC staff will collaborate with cooperative agreement recipients, providing guidance and coordination throughout the duration of the project. Activities that will be conducted by the CDC include:

1. Participate in developing protocols for the epidemiologic survey of the targeted sites and the intervention to be tested; outline data to be collected at the targeted sites; develop standardized data collection instruments and procedures; and establish a timetable for study activities.

2. Assist in the overall coordination of the development, implementation, and evaluation of the intervention.

3. Provide leadership and current scientific information on relevant intervention approaches and provide oversight of epidemiologic and intervention research design to ensure adherence to appropriate scientific standards.

4. Conduct periodic site visits to observe and discuss development and implementation of study activities.

5. Coordinate the compilation of a monograph and other documents describing interventions tested and resulting recommendations, to be distributed appropriately.

6. Maintain a multi-site data base to develop reports and other publications, when appropriate.

7. Cooperate in preparation and publication of study results.

Technical Reporting Requirements

An original and two copies of semiannual progress reports are required of all grantees. Time lines for the semiannual reports will be established at the time of award. An original and 2 copies of the Financial Status Report (FSR) are required no later than 90 days after the end of the budget period. A final program report and FSR are due no later than 90 days after the end of the project period. All reports will be submitted to the Grants Management Branch, Procurement and Grants Office, CDC.

Application Content

Applications must be developed in accordance with PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189). All material must be typewritten, double-spaced pages, with type no smaller than 10 CPI (12 point), on 8.5'' x 11'' paper, with at least 1'' margins, headings and footers, unbound and printed on one side only. Number each page clearly, and provide a complete index to the application and appendices. Do not include any spiral or bound materials or pamphlets. All graphics, maps, overlays, etc., should be in black and white and meet the above criteria.

The first page of the application should contain the response to the Program Requirements section and be marked ''Program Requirements.''

The applicant should provide a detailed description of first-year activities and briefly describe future-year objectives and activities. Do not include a detailed budget or detailed budget justification as part of the Program Narrative.

A. Abstract

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization name and address, project director and telephone number. The abstract should briefly summarize the program for which funds are requested, the activities to be undertaken, and the applicant's organization and composition. The abstract should follow the printed forms and precede the Program Narrative.

B. Program Narrative (Not to Exceed 25 Pages)

The Program Narrative Section should not exceed 25, double-spaced pages (excluding attachments). The program narrative should address the following:

1. Background: Briefly describe:

a. Understanding of the problem of FAS and other conditions associated with prenatal alcohol use, and why the applicant is interested in participating in a project aimed at preventing alcohol-exposed pregnancies;

b. Sociodemographic characteristics of the population of childbearing-age women targeted by the applicant including age distribution, race/ethnicity, marital status, parity, income, education, and behavioral characteristics available (e.g., smoking status);

c. Alcohol use patterns of the women in the target group including levels (e.g., moderate, heavy, and binge drinking) and patterns of use among pregnant and non-pregnant women, rates of alcoholism, rates of alcohol treatment, and any other relevant data available (i.e., alcohol-related injuries and deaths);

d. Reproductive patterns of the targeted population including number of live births per year, abortion rates, fertility rates, prenatal care rates, and contraceptive use rates;

e. Geographic area in which the clients reside (urban, rural), transportation systems available, etc.;

f. Full range of services supplied to the target population by the applicant;

g. Other general health care resources available to clients in the target population as well as specific services for alcohol treatment and family planning.

2. Organization: Briefly describe:

a. How the applicant will access women in the high-risk settings being targeted;

b. Current working relationship between the applicant and the public health department, family planning service providers, and alcohol and substance abuse treatment providers as appropriate;

c. Proposed organization structure, with lines of authority, for implementing and managing the study activities. Staff should include a

principal investigator (recommend at least 10 percent time of an individual at the doctorate level with published research to provide oversight); a project coordinator who oversees all study activities including the epidemiologic component; an intervention coordinator who assures implementation of the model intervention and oversees data collection for this component; data entry and clerical support;

d. Current working relationship with any research, academic, or scientific groups, or community-based or other affiliated organizations;

e. Strategy for recruitment of study participants in the target group;

f. Plans for conducting this study while meeting other current clinical or research commitments;

g. The degree to which human subjects may be at risk and the assurance that the project will be subject to initial and continuing review by the appropriate institution review committees;

h. The proposed plan for the inclusion of racial and ethnic minority populations for appropriate representation.

3. Capacities: Describe the capacity and experience of the applicant and the clinical/agency site(s) in which the intervention study will be conducted including:

a. Description of previous behavioral and women's health research conducted;

b. Description of the setting in which participants will be recruited into the study, and the commitment to designate office and operating space for the study;

c. Commitment to begin study implementation by January 1, 1998, including letters of commitment from study sites to begin participation by this date.

4. Current Level of Service Delivery: Provide data from the past year on the following:

a. The number of women in the high-risk target group who are seen/accessed annually by the applicant (e.g., must see at least 500 high-risk women per year in each setting);

b. Proportion of clients seen in one year who are ongoing versus new (intervention implementation requires the ability to track 50–100 high-risk women over one year);

c. Rate of return appointments versus those lost to follow-up;

d. Description of any other studies currently under way in the proposed study site.

5. Approach:

a. Describe, in summary, the approach to be taken by the applicant in implementing this cooperative agreement including identification of appropriate staff to perform essential study activities; recruitment of participants for intervention implementation; delivery of the essential components of the intervention; follow-up of clients in the intervention project; and quality assurance of quantitative data collected and protocol implementation.

b. Identification of potential problem areas in the implementation of survey and intervention activities in projected study sites.

6. Assurances: The applicant must provide the following:

a. Assurance that study documents will be handled and stored to ensure confidentiality and assure retention;

b. Assurance that project staff will be hired in a timely manner;

c. Assurance that key project personnel (or designees if the individuals filling these positions have not been employed at the time) will meet with CDC in Atlanta within 1 month of award to discuss initial study activities.

7. Budget and Line-Item Justification: This section must include a detailed first-year budget and narrative justification with future annual projections. The applicant should describe the program purpose for each budget item. For contracts contained within the application budget, applicants should name the contractor, if known; describe the services to be performed; justify the use of a third party; and provide a breakdown of and justification for the estimated costs of the contracts, the kinds of organizations or parties to be selected, the period of performance, and the method of selection.

Budget should include travel for the key study personnel to meet 3 times per year with CDC and may include incentives for subjects to maintain participation in study activities.

Review and Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and affirmative response as outlined under the previous heading, ''Program Requirements.'' Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

An Objective Review of applications that are successful in the preliminary review will then be conducted according to the following criteria:

A. Applicant's Understanding of the Problem (20%)

The extent to which the applicant demonstrates an understanding of the problem of FAS and other alcohol-related birth defects, alcohol use patterns of childbearing-age women, and the maternal risk factors which contribute to harmful alcohol use during pregnancy. Also, a demonstrated understanding of the process of changing alcohol use behavior and of why pregnancy postponement is an important strategy for preventing alcohol-exposed pregnancies.

B. Description of the Target Population and Outline of Approach (50%)

The extent to which the applicant has provided a full and comprehensive description of the target population, including available statistics which provide reasonable justification for designating the group targeted as high risk for an alcohol-exposed pregnancy, as well as an overall description of the approach to be taken in conducting the epidemiologic survey and delivering the model interventions. How the applicant will address alcohol assessment, counseling and referral for problem drinking, and provision of family planning services to high-risk clients should be clearly stated. Applicant must also provide adequate demonstration of its ability to access a study population of at least 500 high-risk women annually, and to follow a cohort of 50–100 high-risk women for intervention activities.

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes: (a) The proposed plan for the inclusion of racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure differences when warranted; and (d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

C. Capacity to Conduct Project Activities and Begin Study Operations in a Timely Fashion (30%)

The extent to which the applicant has provided information to support its ability to conduct the activities of the cooperative agreement including documentation of previous research experience in behavioral science research focusing on women's health issues, and/or addictive disorders; documentation of institutional support for the project; demonstrated ability to

identify qualified personnel to fill key positions (including principal investigator, project coordinator, and intervention coordinator) and begin study activities in a timely fashion; and a description of how space required for the study will be acquired or designated.

D. Budget Justification and Adequacy of Facilities (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds. The applicant shall describe and indicate the availability of facilities and equipment necessary to carry out this project.

E. Human Subjects Review (Not Scored)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects.

Funding Preferences

In making awards, priority consideration may be given to: (1) ensuring a racial/ethnic balance; and (2) ensuring rural, urban, and national geographic distribution among the grantees.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications, they should reference Announcement 746 and forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should reference Announcement 746 and forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to ''accommodate or explain'' tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate State and/or local health agency(ies) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State and/or local health agency is determined by the applicant. The following information must be provided:

A. A copy of the face page of the application (SF424).

B. A summary of the project that should be titled ''Public Health System Impact Statement'' (PHSIS), not to exceed one page, and include the following:

1. A description of the target population(s) to be served;

2. A summary of primary prevention activities to be implemented and evaluated;

3. A description of the coordination plans with the community working partners for developing, implementing, and evaluating the primary prevention activities.

If the State and/or local health official should desire a copy of the entire application, it may be obtained from the SPOC or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number assigned to this program is 93.283.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement program will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Human Subjects

If the proposed project involves human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

C. Confidentiality

All personal identifying information obtained in connection with the delivery of services provided to any person in any program carried out under this cooperative agreement cannot be disclosed unless required by a law of a State or political subdivision or unless such a person provides written, voluntary informed consent.

1. Nonpersonal identifying, unlinked information, which preserves the individual's anonymity, derived from any such program may be disclosed without consent:

a. In summary, statistical, or other similar form, or

b. For clinical or research purposes.

2. Personal identifying information: Recipients of CDC funds who must obtain and retain personally identifying information as part of their CDC-approved work plan must:

a. Maintain the physical security of such records and information at all times;

b. Have procedures in place and staff trained to prevent unauthorized disclosure of client-identifying information;

c. Obtain informed client consent by explaining the risks of disclosure and the recipient's policies and procedures for preventing unauthorized disclosure;

d. Provide written assurance to this effect including copies of relevant policies; and

e. Obtain assurances of confidentiality by agencies to which referrals are made. Assurance of compliance with these and other processes to protect the confidentiality of information will be required of all recipients. A DHHS certificate of confidentiality may be required for some projects.

D. Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) to ensure that individuals of the various racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where a clear and compelling rationale exists that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47949–47951, dated Friday, September 15, 1995.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, on or before July 22, 1997.

A. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicant must request a legible dated U.S. Postal Service postmark or obtain a legible dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.)

B. *Late Applications:* Applications which do not meet the criteria in A.1. or 2., are considered late applications. Late applications will not be reviewed and will be returned to the applicant.

Where to Obtain Additional Information:

To receive additional written information call (404) 332–4561. You will be asked your name, address, and phone number and will need to refer to Announcement 746. A complete program description and information on application procedures are contained in the application package. Business management technical assistance, and an application package may be obtained from Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6535; Internet: jcw6@cdc.gov.

FAS programmatic assistance may be obtained from Dr. Louise Floyd at telephone (770) 488–7370, Internet: rlf3@cdc.gov, or Gregg Leeman at telephone (770) 488–7268, Internet: gcl1@cdc.gov, Division of Birth Defects and Developmental Disabilities, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–15, Atlanta, Georgia 30341–3724.

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC homepage is [http://www.cdc.gov].

CDC will not send application kits by facsimile or express mail.

Please refer to Announcement Number 746 when requesting information and submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full report; Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary report; Stock No. 017–001–00473–1) referenced in the ''Introduction'' through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 16, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 745]

Cooperative Agreement for Population-Based Surveillance of Fetal Alcohol Syndrome; Notice of Availability of Funds for Fiscal Year 1997

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 funds for a cooperative agreement program to establish or enhance statewide, population-based surveillance of fetal alcohol syndrome (FAS). Population-based surveillance of FAS is important to document the magnitude of the problem and to monitor trends in the occurrence of this preventable birth defect. Ongoing surveillance is also essential in documenting the impact of prevention efforts.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Alcohol and Other Drugs, Environmental Health, Maternal and Infant Health, and Surveillance and Data Systems. (To order a copy of ''Healthy People 2000,'' see section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Sections 301 and 317(k)(2) of Public Health Service Act (42 U.S.C. 241 and 247b(k)(2), as amended.

Smoke-Free Workplace

CDC strongly encourages all recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the State health departments or other State agencies or departments deemed most appropriate by the State to direct and coordinate the State's surveillance activities and that: (1) represent a population of not less than 25,000 live births per year within

a State, group of States, or geographically-defined area; and/or (2) demonstrate evidence of alcohol problems among women in the targeted study population.

This eligibility includes bona fide agents or instrumentalities of States which are acting as the official agent of the State(s) for surveillance activities.

This eligibility also includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

State agencies applying under this announcement that are other than the official State health department must provide written concurrence for the application from the official State health agency.

Only one application from each single State or group of States may enter the review process and be considered for an award under this announcement.

Note: Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

Availability of Funds

Approximately $300,000 will be available in FY 1997 to award up to 3 cooperative agreements. Projects are expected to begin on or about September 30, 1997, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the approved project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1997 HHS Appropriations Act, which became effective October 1, 1996, expressly prohibits the use of 1997 appropriated funds for indirect or ''grass roots'' lobbying efforts that are designed to support or defeat legislation pending before State legislatures. This new law, Section 503 of Pub. L. No. 104–208, provides as follows:

Sec. 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, * * * except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Pub. L. No. 104–208 (September 30, 1996).

Background

Birth defects are the leading cause of infant mortality in the United States, accounting for more than 20 percent of all infant deaths. In addition, birth defects are the fifth leading cause of years of potential life lost and contribute substantially to childhood morbidity and long-term disability. Fetal Alcohol Syndrome is a leading birth defect that causes significant lifetime disability. Unlike many other birth defects, however, FAS has a known etiology and is preventable. The success of any public health prevention or intervention program must be measured by comparing the incidence or prevalence of a condition before and after implementation of programs. Incidence and prevalence data are also important for estimating the societal impact of a disorder and planning for resource use.

The specific Healthy People 2000 health objective is to reduce the rate of FAS in the general population to no more than .12 cases per 1,000 live births by the year 2000. The original baseline data for this objective (.22 per 1,000 live births in 1987) were derived from a national hospital-based epidemiologic surveillance program of birth defects—the Birth Defects Monitoring Program (BDMP) of CDC. Although more recent rates of .67 per 1,000 have been generated by this system, this increase probably represents improvements in the recognition and reporting of FAS at birth. Other studies using different methods and data sources report prevalence rates ranging from .33 to 2.2 per 1000.

Developing a surveillance system for FAS presents unique challenges that cannot be met by current birth defects monitoring systems that focus only on the first year of life. There is no simple, objective laboratory test for the diagnosis of FAS. The diagnosis is based primarily on clinical examination and the application of diagnostic criteria in each of three categories: (1) prenatal or postnatal growth retardation; (2) central nervous system abnormalities which may manifest as developmental delays in childhood; and (3) characteristic abnormal facial features (including short palpebral fissures, a long smooth philtrum, thin upper lip, and flattened midfacial area). Since no single characteristic (beyond the facial dysmorphia) is specific to the diagnosis of FAS, the application of these criteria requires expertise in recognizing dysmorphic features and differentiating this condition from other syndromes and malformations.

Furthermore, some of the cardinal facial features and central nervous system abnormalities are not apparent during the first year of life. FAS, like other syndromes, becomes easier to diagnose with increasing age, at least until about puberty.

Clearly, surveillance of FAS cannot depend on any single source for case ascertainment. A multiple source method which may include, but is not limited to, birth defects monitoring programs, developmental disabilities or special needs registries, hospital discharge data, special education and other school records, Medicaid data, vital statistics, private provider and special diagnostic units, screening and case-finding activities in special settings, and other population-based systems appear promising. The theoretical basis for this multiple-source approach is that children with FAS, because of the nature of the health and developmental problems associated with the condition, are likely to encounter one or more of these resources for services at some point in early childhood or school age. Often-times, however, the correct diagnosis is not made. Thus, an integral component of a multiple-source methodology is provider education and training.

Purpose

The purpose of this cooperative agreement is to:

A. Enhance an existing system or to develop and implement a new system which uses a multiple source surveillance methodology to enable researchers to determine the prevalence of FAS within a geographically-defined area (statewide, multiple States, or regions of a State);

B. Improve the capacity to ascertain true cases of FAS and generate population-based surveillance data;

C. Establish relationships with facilities or programs where children with FAS are likely to be diagnosed or receive services, such as high-risk newborn registries, special diagnostic units, special education programs, special needs registries, and other programs or settings for children with developmental disabilities;

D. Evaluate the completeness of the surveillance system methodology, the system's ability to generate a prevalence rate for FAS, and the potential for monitoring trends;

E. Implement provider training and education on FAS to improve case ascertainment, referral and case management practices, and prevention activities.

Program Requirements

In conducting activities to achieve the purpose of this cooperative agreement, the recipient will be responsible for the activities under A. (Recipient Activities) below, and CDC will be responsible for activities under B. (CDC Activities) below:

A. Recipient Activities

1. Meet at CDC to:

a. Develop and agree on a surveillance case definition.

b. Develop and agree on a plan to implement the data collection instruments and methods for abstracting medical and school records as appropriate.

c. Develop an evaluation plan for the surveillance system. This will include a plan for estimating false positive and false negative error rates, such as a comparison of cases identified using the surveillance criteria with more comprehensive clinical criteria or follow-up of cases to confirm the diagnosis.

d. Develop a plan for publishing prevalence rates and rates among various risk groups and authorship on other publications emanating from the surveillance activities.

2. Develop and implement a multiple source methodology to ascertain cases of FAS and generate population-based estimates of the prevalence of FAS.

3. Develop a plan for provider education and training on FAS case ascertainment.

4. Establish collaborative relationships (for the purpose of diagnosis and case ascertainment) with appropriate diagnostic units serving the surveillance population, such as special genetics, dysmorphology, neurobehavioral, and developmental pediatrics clinics.

5. Establish collaborative relationships with agencies providing services to children with FAS including special education, foster care programs, high-risk newborn nurseries, and other high-risk service environments.

6. Implement quality assurance procedures to ensure that study protocols are being followed, and that the surveillance procedures are being uniformly implemented in the study sites.

7. Collaborate with other participating sites on a manuscript which describes the surveillance system, case definitions, methodology, collaborative relationships, data collection, findings (including the prevalence rate of FAS), and recommendations across sites.

B. CDC Activities

1. Convene two meetings of awardees in the first nine months, then annually thereafter, to develop and review the surveillance case definition, design surveillance data collection instruments, and develop study protocols and procedures.

2. Provide leadership and current scientific information on relevant health information and surveillance approaches, and provide oversight of the surveillance and research design to ensure adherence to appropriate standards.

3. Provide guidance and technical assistance in the development of an evaluation plan for the surveillance system.

4. Conduct periodic site visits to observe and discuss development and implementation of activities and analysis of surveillance data.

5. Provide guidance and coordinate the aggregation and analysis of data across surveillance sites.

6. Maintain multi-state data base to develop FAS prevalence rates and other information for reports and other publications, when appropriate.

7. Cooperate in preparation and publication of study results.

Technical Reporting Requirements

An original and two copies of semiannual progress reports are required of all awardees. Time lines for the semiannual reports will be established at the time of award. An original and 2 copies of the Financial Status Report (FSR) are required no later than 90 days after the end of the budget period. A final program report and FSR are due no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, Procurement and Grants Office, CDC.

Application Content

Applications must be developed in accordance with PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189). All material must be typewritten, double-spaced pages, with type no smaller than 10 CPI (12 point), on 8.5″ × 11″ paper, with at least 1″ margins, headings, and footers, unbound and printed on one side only. Number each page clearly, and provide a complete index to the application and appendices. Do not include any spiral or bound materials or pamphlets. All graphics, maps, overlays, etc., should be in black and white and meet the above criteria.

The applicant should provide a detailed description of first-year activities and briefly describe future-year objectives and activities. Do not include a detailed budget or detailed budget justification as part of the Program Narrative.

A. Abstract

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director and telephone number. The abstract should briefly summarize the program for which funds are requested, the activities to be undertaken, and the applicant's organization and composition. The abstract should precede the Program Narrative. The abstract should include the required cohort statistics and eligibility status.

B. Program Narrative (not to exceed 25 pages)

The Program Narrative should specifically address all items in the ''PROGRAM REQUIREMENTS.'' All items of the Program Narrative should begin on a new page. If the proposed program is a multiple-year project, the applicant should provide detailed description of the first-year activities, and briefly describe future-year objectives and activities. The ''EVALUATION CRITERIA'' will serve as the basis for evaluating the

application; therefore, the narrative of the application should address the following:

1. Applicant's Understanding of the Problem

The applicant should demonstrate an understanding of FAS, the challenges to conducting surveillance of FAS and other conditions associated with prenatal alcohol use, and an understanding of the applicant's abilities and resources to conduct FAS surveillance.

2. Applicant's Description of the Surveillance Methodology

The applicant's description should include at least the following:

a. A proposed surveillance case definition and how the definition will be operationalized given the described methodology;

b. Clearly described methods for case ascertainment using multiple sources. Methods should include a plan for estimating the completeness of the surveillance system including a plan for estimating sensitivity and specificity;

c. Demonstration of a minimum annual birth population of not less than 25,000 in the State or region to be included in the study and/or evidence of unusually high rates of alcohol use among women in the population (e.g., analysis of BRFSS, PRAMS, or other local surveys) from which the surveillance data will be generated;

d. Methods for collaboration with and written assurances from special diagnostic units such as genetics clinics, developmental disabilities registries, special education programs, and other agencies serving children who may have FAS;

e. Collaboration with existing state-based birth defects, developmental disabilities, or FAS surveillance activities;

f. A description of the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

3. Project Management and Staffing

The applicant must demonstrate the ability and expertise to carry out population-based surveillance for FAS. The applicant must demonstrate the following:

a. Expertise in abstracting medical and school records;

b. Expertise in the diagnosis of FAS;

c. Expertise in epidemiology and public health surveillance;

d. Plan for personnel resources to be allocated to the project to achieve the goals and objectives of the application (dedication of at least one full-time professional, scientific employee or equivalent to the project is strongly advised).

4. Relationship to Other Funding Sources

The applicant must describe the availability of State resources and other sources of funds to support the surveillance activities in this cooperative agreement. The applicant must describe how its program will build on existing surveillance, screening, diagnosis, or service-related activities for FAS.

5. Budget Justification and Adequacy of Facilities

This section must include a detailed first-year budget narrative justification with future annual projections. Budgets should include costs for travel for two project staff to attend at least two two-day meetings in Atlanta with CDC staff. The applicant should describe the program purpose of each budget item. Proposed contracts should identify the name of the contractor, if known; describe the services to be performed; provide an itemized budget and justification for the estimated costs of the contract; specify the period of performance; and describe the method of selection.

6. Human Subject Review

This section must describe how the project will be subject to initial and continuing review by the appropriate human subjects institutional review committees.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Understanding of the Problem (20%)

The extent to which the applicant has a clear, concise understanding of the requirements, objectives, and purpose of the cooperative agreement, including the applicant's willingness to collaborate and coordinate activities with CDC and other funded sites. The extent to which the application reflects an understanding of the complexities of FAS surveillance and an understanding of the necessary resources to conduct this surveillance.

B. Description of the Surveillance Methodology (50%)

The extent to which the applicant describes an approach to surveillance of FAS that demonstrates collaboration with multiple sources (letters of support encouraged) and *addresses all* issues outlined in the ''Program Requirements'' recipient activities section. In addition to these program requirements, the extent to which the applicant addresses the six issues outlined under section 2 of the ''Program Narrative'' regarding the surveillance methodology.

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes:

(a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure differences when warranted; and (d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

C. Project Management and Staffing (30%)

The extent to which the applicant has the skills, experience, and access to data that demonstrate the ability to conduct FAS surveillance. The extent to which the applicant addresses the issues described in the ''Program Narrative'' section 3. The adequacy of the description of the present staff and capability to assemble competent and trained staff to conduct FAS surveillance. The applicant shall identify all current and potential personnel who will be utilized to work on this cooperative agreement, including qualifications and specific experience as it relates to the requirements set forth in this request.

D. Budget Justification and Adequacy of Facilities (not scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds. The applicant shall describe and indicate the availability of facilities and equipment and other sources of funds necessary to carry out this project.

E. Human Subject Review (not scored)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects.

Funding Preferences

In making awards, priority consideration may be given to: (1)

ensuring a racial/ethnic balance; and (2) ensuring rural, urban, and national geographic distribution among the grantees.

Executive Order 12372

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E. O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State or tribe. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to ''accommodate or explain'' tribal process recommendations it receives after that date.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement program will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Human Subjects

If the proposed project involves human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

C. Confidentiality

All personal identifying information obtained in connection with the delivery of services provided to any person in any program carried out under this cooperative agreement cannot be disclosed unless required by a law of a State or political subdivision or unless such a person provides written, voluntary informed consent.

1. Nonpersonal identifying, unlinked information, which preserves the individual's anonymity, derived from any such program may be disclosed without consent:

a. In summary, statistical, or other similar form, or

b. For clinical or research purposes.

2. Personal identifying information: Recipients of CDC funds who must obtain and retain personally identifying information as part of their CDC-approved work plan must:

a. Maintain the physical security of such records and information at all times;

b. Have procedures in place and staff trained to prevent unauthorized disclosure of client-identifying information;

1c. Obtain informed client consent by explaining the risks of disclosure and the recipient's policies and procedures for preventing unauthorized disclosure;

d. Provide written assurance to this effect including copies of relevant policies; and

e. Obtain assurances of confidentiality by agencies to which referrals are made. Assurance of compliance with these and other processes to protect the confidentiality of information will be required of all recipients. A DHHS certificate of confidentiality may be required for some projects.

D. Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) to ensure that individuals of the various racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where a clear and compelling rationale exists that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register,** Vol. 60, No. 179, pages 47949–47951, dated Friday, September 15, 1995.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, on or before July 22, 1997.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the special emphasis panel review committee. For proof of timely mailing, applicants must request a legibly dated

U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

2. Late Applications:

Applications that do not meet the criteria in 1.a. or 1.b. above are considered late. Late applications will not be considered and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked your name, address, and phone number and will need to refer to Announcement 745. A complete program description and information on application procedures are contained in the application package. Business management technical assistance, and an application package may be obtained from Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6535; Internet: jcw6@cdc.gov.

FAS surveillance technical assistance may be obtained from Karen Hymbaugh at telephone (770) 488–7370, Internet: kxh5@cdc.gov, or programmatic assistance from Gregg Leeman, at telephone (770) 488–7370, Internet: gcl1@cdc.gov, Division of Birth Defects and Developmental Disabilities, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–15, Atlanta, Georgia 30341–3724.

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC homepage is [http://www.cdc.gov].

CDC will not send application kits by facsimile or express mail. Please refer to Announcement Number 745 when requesting information and submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full report; Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report; Stock No. 017–001–00473–1) referenced in the ''INTRODUCTION'' through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 16, 1997.

Joseph R. Carter

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–13429 Filed 5–21–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 752]

Health Services Research on Sexually Transmitted Diseases Prevention Within Managed Care Settings

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 funds for applied health services research projects on sexually transmitted diseases (STDs) prevention within managed care settings.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Sexually Transmitted Diseases (STDs). (To order a copy of ''Healthy People 2000,'' see the Section ''WHERE TO OBTAIN ADDITIONAL INFORMATION.'')

Authority

This program is authorized under Section 318 of the Public Health Service Act (42 U.S.C. 247C), as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, nonprofit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents or instrumentalities, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, small, minority, or women-owned businesses, managed care organizations and clinical public health entities such as: sexually transmitted disease (STD) clinics and family planning clinics are eligible to apply.

Applications from health departments, Indian tribal governments, academic institutions, and contractors will be required to demonstrate partnership with a managed care organization, and applications from managed care organizations will be required to demonstrate partnership with a State or local health department. All eligible applicants must have research capacity involving previous experience with health services research, and access to relevant clinic populations such as adolescents, women, minorities, and Medicaid populations.

Availability of Funds

Approximately $650,000 is available in FY 1997 to fund up to a total of five awards in four research areas. It is expected that the average award will be $200,000, ranging from $100,000 to $300,000. Specifically, organizations may submit applications in EACH or ANY of the following four research areas:

1. STD-Managed Care Prevention Services Survey. (1 year funding)
2. Quality of Service Studies. (2–3 years funding)
3. Notifiable Disease Reporting and Information Systems Studies. (2–3 years funding)
4. Population-Level STD Prevention Studies. (2–3 years funding)

It is expected that awards will begin on or about September 15, 1997, and will be made for a 12-month budget period within a one to three year project period. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds

Funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds may not be used to supplant State or local health department funds or for inpatient care, medications, or construction.

Restricitons on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for

lobbying of federal or state legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated federal funds (other than profits from a federal contract) for lobbying Congress or any federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1997 HHS Appropriations Act, which became effective October 1, 1996, expressly prohibits the use of 1997 appropriated funds for indirect or ''grass roots'' lobbying efforts that are designed to support or defeat legislation pending before state legislatures. This new law, Section 503 of Pub. L. No. 104–208, provides as follows:

Sec. 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, * * * except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislaiton or appropriations pending before the Congress or any State legislature. Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Pub. L. No. 104–208 (September 30, 1996).

Background

The recent Institute of Medicine (IOM) report ''The Hidden Epidemic: Confronting Sexually Transmitted Diseases'' (NAP 96) concluded that STDs represent a tremendous health and economic burden in the United States (U.S.). That committee recommended that comprehensive high quality STD-related health services be available to all persons.

Managed care represents a revolution in the way health care is funded, organized, and delivered in the U.S. This has and will continue to have impact on the way in which STD prevention is conducted in both the private and public sectors. In the public sector, many health departments are in some stage of transition from directly delivering clinical services in categorical clinics to utilizing other delivery models that involve managed care. Thus, in the private sector, managed care providers play a key role in the way STDs are diagnosed and managed for increasing numbers of Americans. With more diagnostic and treatment services for STDs moving into the private sector, new partnerships are needed between Managed Care health plans and public health agencies to design and implement essential STD-related services in innovative ways.

Purpose

The purpose of this applied health services research program is to develop a knowledge base through published research in scientific literature which will improve delivery of STD prevention services within managed care settings. Such a knowledge base includes a variety of activities covering the range of STD interventions, such as risk assessment, screening asymptomatically infected persons, early diagnosis of infected persons, treatment, partner notification and management, notification of reportable diseases, counseling, and laboratory services.

This program also seeks to improve the availability, accessibility, delivery, quality, effectiveness, cost-effectiveness, and outcomes of STD prevention services in managed care health plans. The objectives include provision of data for policy development, assessment, and capacity building at the State and local level with respect to managed care and the health department's ability to develop appropriate STD prevention policies and to conduct STD surveillance in a changing environment.

It is anticipated that an additional benefit will be to establish new partnerships and relationships between managed care health plans and public health agencies that will collaboratively address the challenges of improving the delivery of STD treatment and prevention services.

Program Requirements

Work performed under this agreement will be the result of collaborative efforts. Recipients will be responsible for research methods and design, analysis, use of data and dissemination via peer publications or other related material. CDC will coordinate these collaborative efforts and expects to work closely with each award recipient.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities under B. (CDC Activities).

A. Recipient Activities

In conducting activities to achieve the purpose of this program, the recipient will:

1. STD-Managed Care Prevention Services Survey:

Develop a nationally representative health services survey examining the extent and characteristics of STD care that occur within managed care health plans. The survey is expected to address the following questions:

a. How alternative managed care systems affect access and utilization, quality, cost and outcomes of STD-related treatment and prevention services. This would address issues related to laboratory, screening, counseling, treatment, health promotion, STD case management, partner management. This would also address the extent to which diagnosis and treatment of STDs is syndromic (i.e., presumptive STD diagnosis and empirical treatment based on symptoms and physical examination alone).

b. How STD care and delivery of prevention services vary with organization, structure, and financing of health plans, specifically with respect to type of services offered, access, and quality (including patient satisfaction). For example:

(1) Address the characteristics (including demographic characteristics such as age, race/ethnicity, income, occupation, socioeconomic status, type of insurance) of those enrolled. Also address the characteristics of those actually receiving care (e.g., what is the coverage?), and discuss how plans target adolescents, women, high-risk patients, and underserved population groups of interest.

(2) Address the organizational linkages to essential components of STD services not provided by a health plan (e.g., partner notification, counseling). Also address whether or not referral is occurring, and how is it handled (e.g., what is the nature of the referral arrangements?)

2. Quality of Service Studies:

Conduct studies to improve the quality of STD prevention services to promote early detection, effective

treatment, and follow up of STDs within managed care health plans. Projects should consider how the information could be used by consumers and purchasers to improve decision making. One or both of the following items must be addressed:

a. Develop and test STD-related performance measures and other quality measurement tools to improve quality assurance monitoring in health plans and other clinical venues. Recipients will address the issue of data and use of information systems that support the assessment, analysis and evaluation aspects of performance monitoring.

b. Conduct demonstration projects that will improve access to high-quality STD-related services. These may focus on interventions for providers or for patients, and may address issues of access, screening, diagnosis, treatment, counseling and education, or partner management. Recipients should pay special attention to the effectiveness and outcomes of the interventions studied.

3. Notifiable Disease Reporting and Information Systems Studies:

Conduct studies to develop and evaluate information systems that can meet the internal data requirements of managed care plans while improving the completeness and accuracy of surveillance and disease reporting activities of the plan. Recipients should:

a. Assess the current status of electronic information systems in the health plan and associated health department, document their characteristics, and determine the feasibility for data sharing. Elements to be considered are: disease (morbidity) data, laboratory data, encounter data, pharmacy data, and use of and integration with existing systems such as sexually transmitted diseases management information system (STD*MIS), national electronic transmission surveillance (NETS), health plan and employer data information set (HEDIS), public health laboratory information system (PHLIS), or other equivalent State health department data collection system.

b. Address the issues of confidentiality of data and the use of data for reimbursement of services provided by health departments.

4. Population-Leveled STD Prevention Studies:

Conduct studies that involve the development and testing of interventions based on collaborative partnerships to achieve population-level goals (e.g., to decrease transmission and not just treat symptoms and prevent sequelae). One or both of the following items must be addressed:

a. How managed health care plans can adopt public health preventive measures. An example of this would be to develop and evaluate methods for plans to effectively manage sex partners of members who are diagnosed with an STD to prevent re-infection and reduce further transmission. Another example would be to develop and evaluate methods for provider-based counseling or education.

b. How managed health care plans can target or reconfigure existing services to reduce disease transmission within the community. An example of this would be to develop and evaluate methods for screening health plan members at risk for STDs who do not otherwise present for care. Another example would be to develop cost-effective risk assessment and targeted screening protocols for use in primary care settings to reduce the incidence of pelvic inflammatory disease.

B. CDC Activities

1. Assist recipients to develop, pilot test, and implement protocols and instruments.

2. Provide scientific and technical guidance in the general operations.

3. Provide advice in monitoring and evaluating scientific and operational accomplishments.

4. Assist in data analysis and presentation and reporting of research materials and results.

5. Monitor the recipient's performance of program activities, protection of client confidentiality and compliance with other requirements.

6. Provide technical assistance that may be needed to improve electronic data transmission between reporting organizations and associated health departments.

Technical Reporting Requirements

An original and two copies of a quarterly progress report must be submitted no later than 30 days after the end of each budget quarter. An original and two copies of a financial status report (FSR) is required no later than 90 days after the end of each budget period. A final progress report and FSR are due no later than 90 days after the end of the project period. All reports will be submitted to the Grants Management Branch, CDC.

Application Content

Applicatons must be developed in accordance with PHS Form 5161–1 (OMB Number 0927–0189), information contained in the program announcement, and the instructions and format provided below.

Applicants are required to submit an original and two copies of the application. Number each page clearly and sequentially, and provide a complete index to the application and its appendices. The original and each copy of the application set must be submitted UNSTAPLED and UNBOUND. All material must be typewritten, double spaced, with unreduced type on 8½″ by 11″ paper, with at least 1″ margins, headings and footers, and printed on one side only. Materials which should be part of the basic application will not be accepted if placed in the appendices.

If an applicant responds to more than one research area, each research area must be addressed separately, including a separate project-specific narrative, budget, and attachments.

The application must include an executive summary not to exceed four pages. The application must also include:

1. Background

a. Describe the STD clinical and preventive health services available in the community and within the managed care health plan.

b. Describe the epidemiology of gonorrhea, chlamydia, and primary and secondary (P&S) syphilis in calendar year 1995 for the proposed project area.

c. Describe those at risk for STDs and their access to health care, the percentage uninsured, unemployed, under the poverty level, and those receiving Temporary Assistance for Needy Families (TANF), formerly Aid to Families with Dependent Children.

d. Describe the managed care system and extent of managed care penetration and competition with the local or regional health care market. Describe the managed care structure, organization and financing, and the percentage of Medicaid population under managed care contracts and of those at risk for STDs under managed care contracts.

e. Include additional background on any health care reform legislation, policies and additional environmental and socio-demographic factors that may be relevant to the study of STD services in managed care. Examples include privatiization of categorical STD clinics, existing or pending Federal Medicaid waivers, and the extent to which existing Medicaid managed care contracts address public health issues, existing contracts, memoranda of understanding, agreements or arrangements between health plans and health departments.

2. Site Selection

Define a project area based on specific information included in the background.

3. Objectives

Provide a focused research agenda with long-term and short-term objectives that is realistic, specific, measurable, time-phased, and consistent with the objectives of the announcement.

4. Methods

Described the methods and activities that will be undertaken to accomplish the objectives, including, where applicable, outcomes to be evaluated (i.e., health services-related outcomes, program-related outcomes, or STD specific health-related outcomes), the use of appropriate comparison groups, the sampling scheme and sample size calculations, qualitative and quantitative methods, and how data will be accessed, collected and used.

5. Evaluation Plan

Applications must provide an evaluation plan to monitor the effectiveness of the project activities and the progress made towards meeting the objectives.

6. Partnerships

Applications from health departments, academic institutions, and contractors will be required to demonstrate partnership with a managed care organization. Applications from managed care organizations will be required to demonstrate partnership with a State or local health department.

Provide evidence of partnership and documentation of the commitment of collaborating organizations, agencies or individual researchers. Include letters summarizing the nature of the collaboration and indicating support. Letters should be signed by the chair of an academic department and the Dean of the institution; the STD program manager and director of communicable disease control or health officer; the director of research (if applicable), and medical director or other senior officer of the health plan.

7. Research Capacity

Provide evidence of health services research capability. Describe past and current research experience, including the experience of the proposed staff who will participate in this project (include details of experience and competence in research design, data collection, analysis and dissemination). Attach the curriculum vitae of key staff. Describe your plan for project administration.

The research team should include qualified and experienced personnel. Health services research is an interdisciplinary field drawing on theory and methods from biostatistics, epidemiology, medicine, health economics, sociology, operations research, psychology, nursing, and other disciplines. Thus, qualified researchers may come from a variety of fields but must have appropriate training and experience, and previous involvement with health services research projects. Minimum requirements for the research team are a principle investigator, statistician, and data manager.

8. Access to Populations At Rick For STDs

Applications must also provide evidence of access to relevant clinic populations such as adolescents, women, minorities, and Medicaid populations.

9. Budget

Provide a detailed, line-item budget for the project and a budget narrative that justifies each line-item.

Review and Evaluation Criteria

If an applicant applies for more than one research area, each proposal will be evaluate separately. Applications will be reviewed and evaluated according to the following criteria:

1. Background and Objectives (15 points)—Understanding of purpose and objectives of this research as reflected in the statement of research background and research questions.

2. Site Selection (10 points)—The extent to which the choice of a site to conduct this research is appropriate to the objectives, STD epidemiology, social demography, and managed health care system. Emphasis will be placed on demonstrated access to one or more populations considered at high risk for STDs and their complications, including adolescents, women, minorities, or Medicaid enrollees in the project area.

3. Methods (25 points)—The appropriateness and adequacy of the research design and methodology proposed to answer the research questions. This includes: (a) the selection of appropriate outcomes related to health services, STD programs, and STD morbidity; (b) the use of appropriate comparison groups; (c) the inclusion of appropriate sampling schemes, sample size calculation, handling of sampling biases; (d) access to the relevant data sources and the plan for data collection and; (e) the description of the specific quantitative and qualitative analytic technique to be used to answer the research questions.

4. Evaluation (10 points)—The extent to which the applications present a sound evaluation plan that includes aspects such as: research progress measurements and communications, baseline data collection; intervention(s) testing, determination of intervention(s) effectiveness; and economic evaluation.

5. Partnerships (20 points)—The extent to which the proposed research is interdisciplinary, programmatically relevant, and establishes effective collaborative partnership arrangements necessary for the research. The extent to which the application includes letters from the appropriate persons summarizing the nature of the collaboration and indicating support.

6. Research Capacity (20 points)—Overall ability to perform the technical aspects of the project including: (a) the availability of qualified and experienced personnel for a multi-disciplinary team in health services research (including level of education and training, and relevant research experience of the principle investigator and key research personnel; (b) the availability of adequate facilities, general environment, and resources for the conduct of the proposed research and; (c) plans for the administration of the project(s), including a detailed and realistic schedule for the specified activities.

7. Budget (not scored)—The appropriateness of budget estimates in relation to the proposed research. The extent to which budget is reasonable, clearly justified, and consistent with the intended use of funds.

Funding Preferences

CDC reserves the right to make final funding selections based on geographic diversity, the level of STD in an applicants area/jurisdiction, and coverage of the research activities across applications. Matching funds: applicants are asked to demonstrate a commitment to provide matching funding with a letter from a private source, such as a foundation or managed care organization. Preference will be given to those with 1:1 Federal to private funds ratio, with more preference given to those with greater levels of private matching funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than

federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE, Atlanta, GA 30305, no later than 60 days after the application deadline. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after the date.

Indian tribes are strongly encourage to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should send them to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE, Atlanta, GA 30305, no later than 60 days after the application deadline. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 93.978.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Confidentiality

Any personally identifying information obtained in connection with the delivery of services provided to any individual under any program that is being carried out with a cooperative agreement made under this announcement shall not be disclosed unless required by a law of a State or political subdivision or unless such an individual provides written, voluntary informed consent.

Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaska Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register** Vol. 60, No. 179, pages 47947–47951, dated Friday, September 15, 1995.

Application Submission and Deadlines

1. Preapplication Letter of Intent (LOI)

A non-binding letter of intent-to-apply is requested from potential applicants. An original and two copies of a two-page, typewritten LOI should be submitted to the Grants Management Branch, CDC (see ''Applications'' for address). It should be postmarked no later than June 13 1997. The letter should identify the announcement number, title of the specific research activity for which application is being submitted, the name and institutional affiliation of the principal investigator, and the identity of other key participants and participating institutions. No attachments, booklets, or other documents accompanying the LOI will be considered. The letter should also include the estimated total cost of the research activity and the percentage of the total cost being requested from CDC. The LOI does not influence review of funding decisions, but it will enable CDC to plan more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

2. Applications

An original and two copies of the application Form PHS–5161–1 (OMB Number 0937–0189) must be submitted on or before *July 25, 1997* to Van Malone, Grants Management Officer, Attention: Kathy Raible, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–15, Atlanta, GA 30305.

3. Deadlines

A. Applications will meet the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the objective review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. Applications that do not meet the criteria in 3.A.1 or 3.A.2. above are considered late applications. Late applications will not be considered in current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete application package which will include program description, information on application procedures, etc. and business management technical assistance may be obtained from Kathy Raible, Grant Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–15, Atlanta, GA 0305, telephone 404) 842–6592, email or via email at: <kcr8@cdc.gov>.

Programmatic technical assistance may be obtained from William J. Kassler, M.D., M.P.H., Chief Health Services Research and Evaluation Branch Division of STD, National Center for HIV/STD/TB

Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC), 1600 Clifton Road; Mailstop E–44, Atlanta, GA 30333, telephone (404) 639–8276, or facsimile (404) 639–8607, INTERNET address: <wxkl@cdc.gov>.

Internet Home Page

The announcement will be available on one of two Internet sites on the publication date: CDC's home page at <http://www.cdc.gov>, or at the Government Printing Office home page (including free access to the Federal Register) at <http://www.access.gpo.gov>.

Potential applicants may obtain a copy of ''Healthy People 200'' (Full Report, Stock No. 017–001–00474–0), or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) referenced in the ''INTRODUCTION'' through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 16, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–13425 Filed 5–21–97; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 766]

Development of State Health Promotion and Chronic Disease Prevention Databases/Clearinghouses

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 funds for a cooperative agreement program for development of State health promotion and chronic disease prevention databases/clearinghouses that are compatible with Chronic Disease Prevention File (CDP) and the Combined Health Information Database (CHID). CDP File and CHID link health information and education resources into a national network of information on programs, interventions, and methods, and act as a mechanism for collecting, sharing, and distributing information, bibliographies, literature, and health promotion and chronic disease prevention information to professionals responsible for planning, developing, conducting, and evaluating health promotion and chronic disease prevention programs.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000'', a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Cancer, Clinical Preventive Services, Diabetes and Chronic Disabling Conditions, Educational and Community-Based Programs, Family Planning, Heart Disease and Stroke, HIV Infection, Maternal and Infant Health, Nutrition, Oral Health, Physical Activity and Fitness, Sexually Transmitted Diseases, Surveillance and Data Systems, and Tobacco. (For ordering a copy of ''Healthy People 2000,'' see section ''Where to Obtain Additional Information.'')

Authority

This program is authorized under section 317(k)(2) [42 U.S.C 247b (k)(2)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of tobacco products, and Public-Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the official public health agencies of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Funding is limited to one three-year project period to provide start-up costs for establishing a State database. Therefore, Colorado, Minnesota, and Missouri are not eligible applicants because they were funded September 1, 1991, for a three-year project period, under Program Announcement Number 940, entitled ''Assistance Program for Chronic Disease Prevention and Control.'' California, Florida, and Michigan are not eligible participants because they were funded September 30, 1993, for a three-year project period, under Program Announcement Number 344, entitled ''Development of State Health Promotion and Chronic Disease Prevention Databases/Clearinghouses.'' Delaware, Oklahoma, and Washington are not eligible participants because they were funded September 30, 1995, for a three-year project period, under Program Announcement Number 540, entitled ''Development of State Health Promotion and Chronic Disease Prevention Databases/Clearinghouses.''

Availability of Funds

Approximately $90,000 is available in FY 1997 to fund approximately three awards. It is expected that the average award will be $30,000. It is expected that the awards will begin on or about September 1, 1997, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of federal or state legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated

federal funds (other than profits from a federal contract) for lobbying Congress or any federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1997 HHS Appropriations Act, which became effective October 1, 1996, expressly prohibits the use of 1997 appropriated funds for indirect or ''grass roots'' lobbying efforts that are designed to support or defeat legislation pending before state legislatures. This new law, Section 503 of Pub. L. No. 104–208, provides as follows:

Sec. 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, * * * except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Pub. L. No. 104–208 (September 30, 1996).

Background

The need for health information resources to support the primary and secondary prevention activities of health education providers and the health care system has been well documented. The Federal Government recognized this need by establishing the Bureau of Health Education of the Center for Disease Control in 1974, which in 1980, became one of three divisions of the Center for Health Promotion and Education, and in 1988, became part of the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). As the primary Federal focus for health education, the Bureau was charged with meeting the nation's information needs regarding health promotion and education.

Since 1974, CDC has acquired literature and program information to support its research and development, technical assistance, and capacity-building activities in the areas of health promotion and education. This information is now part of the NCCDPHP's Health Promotion and Education Database (HPED). The HPED is part of the overall information system addressed in Public Law 94–317. In the early 1980s, CDC and the National Institutes of Health collaborated to develop CHID, a composite bibliographic database now containing 21 subfiles, including the HPED. CHID is available to the public through the commercial database vendor OVID (formerly CDP Online and BRS Online).

Since 1988, the NCCDPHP has developed several new bibliographic databases including the Cancer Prevention and Control Database, the Comprehensive School Health Database (formerly the AIDS School Health Education Database), the Prenatal Smoking Cessation Database, and the Epilepsy Education and Prevention Activities Database. These databases are also part of CHID.

Recognizing the need to make the databases available to State health and education departments in an affordable format, in 1991 the NCCDPHP developed CDP File, a CD–ROM that includes the NCCDPHP-produced databases, the Smoking and Health Database produced by NCCDPHP's Office on Smoking and Health, as well as an electronic directory of chronic disease program contacts.

For the national system to be comprehensive, identification and collection of information about State and local health promotion and education programs is needed. To meet this need, NCCDPHP has been providing guidance to States interested in establishing health promotion and education databases and clearinghouses since 1984. In turn, the States have made their databases compatible with CDP File and CHID and feed their State-specific program information into the national database. In addition to building the national system, the State-based databases and clearinghouses also support State health promotion and chronic disease prevention program activities by providing State health professionals with access to information on State-specific programs and materials. To date, ten States including California, Colorado, Delaware, Florida, Michigan, Minnesota, Missouri, Ohio, Oklahoma, and Washington, participate in database and clearinghouse development activities.

Purpose

This cooperative agreement will provide States with start-up funds and guidance to establish bibliographic databases that are compatible with CDP File and CHID. The databases may be used to support new or existing health information clearinghouses, thereby increasing health professionals' access to State health promotion and chronic disease prevention information.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A., and CDC will be responsible for the activities under B.

A. Recipient Activities

1. Establish and maintain a bibliographic database compatible with CDP File and CHID.
2. Establish a database advisory committee.
3. Design and carry out a systematic needs assessment to determine specific needs, current resources, and communication networks of State and local health professionals.
4. Identify, acquire, track, promote, and provide access to State and local health promotion and chronic disease prevention program information and materials.
5. Design and implement a quality assurance plan to maintain accurate data entry, descriptive abstracts, and consistent indexing of database records.
6. Revise, update, and delete items in the database.
7. Develop a plan and conduct an evaluation to monitor program activity and use of the database.
8. Develop a plan for gaining administrative support, continuing activities beyond the project period, and institutionalizing the database into the agency organizational structure.

B. CDC Activities

1. Collaborate in the design of the database to ensure compatibility with CDP File and CHID.
2. Collaborate in developing a needs assessment and information collection instruments.
3. Collaborate in developing plans for quality assurance, tracking, evaluation, and institutionalization.
4. Collaborate in training project staff.
5. Assist in promoting the State and national information systems.
6. Coordinate with other Federal agencies, States, and organizations to ensure a coordinated, cooperative effort

to build a comprehensive information sharing system.

Technical Reporting Requirements

An original and two copies of a progress report and financial status report are required no later than 90 days after the end of the budget period. The progress report must include the following for each program, function, or activity involved: (1) A comparison of actual accomplishments to the goals established for the period; (2) the reasons if established goals were not met; and (3) other pertinent information including, when appropriate, analysis and explanation of unexpectedly high costs for performance.

Final financial and performance reports are required no later than 90 days after the end of the project period. All reports will be submitted to the Grants Management Branch, CDC.

Application Content

All applicants must develop their applications in accordance with PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189), information contained in the program announcement, and the instructions outlined below. Applicants are required to submit an original and two copies of the application. Pages should be clearly numbered with a complete index to the application and any appendixes included. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type on 8½″ by 11″ paper, with at least 1″ margins, headers and footers, and printed on one side only.

A. Background and Need

(1) Describe the current system for sharing and disseminating health promotion and chronic disease prevention information within the State.

(2) Describe the need for a State-based bibliographic database and the potential users.

(3) Describe the level of administrative commitment to the project as evidenced by the obligation of staff, equipment, non-Federal funds, or other relevant contributions.

B. Goals and Objectives

Submit realistic, specific, time-framed, and measurable goals and objectives to be achieved during the three-year project period. The objectives should be derived from needs identified in Section A. (2) of ''Application Content'' Section of this announcement. Describe specific process, impact, and outcome objectives that will be measured; the major steps required for implementation; the person or persons responsible for completion; and the projected timetable for accomplishment.

C. Database Development Plan

(1) Submit a plan for establishing a database advisory committee, including a list of potential representatives, and a description of the committee's responsibilities.

(2) Describe the design, implementation, and analysis of a needs assessment that will provide information on specific information needs, current resources, and existing communication networks used by State and local health professionals.

(3) Describe methods for identifying, collecting, selecting, and tracking information resources to be included in the database.

(4) Describe methods for cataloging, abstracting, and indexing records so that they are compatible with CDP File and CHID.

(5) Describe specific strategies for promoting the database and providing access to users.

(6) Describe methods for revising, updating, and deleting items in the database.

D. Institutionalization

Submit a plan for gaining administrative support, continuing activities beyond the project period, and for institutionalizing the database into the agency organizational structure.

E. Management

(1) Describe the proposed staffing and provide job descriptions for the existing and proposed staff, and résumés for each current staff member who will work on the project.

(2) Describe equipment resources available and required to accomplish the stated goals of the project.

F. Quality Assurance

Submit a plan for maintaining accurate data entry, descriptive abstracts, and consistent indexing of database records.

G. Evaluation

Submit a plan for evaluating the effectiveness of the database and achievement of stated objectives.

H. Budget

Submit a detailed budget with line-item justification that is consistent with the purpose and stated objectives of the cooperative agreement.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Background and Need

The extent to which a database currently exists, the degree of need, and administrative commitment to the project. (15 Points)

B. Goals and Objectives

The extent to which the stated goals and objectives are specific, measurable, time-framed and realistic; are derived from identified needs; and describe process, impact, and outcome objectives. (15 Points)

C. Database Development Plan

The appropriateness of the methodologies for: (1) Establishing a database advisory committee; (2) designing, implementing, and analyzing a needs assessment; (3) identifying, collecting, selecting, and tracking information resources; (4) cataloging, abstracting, and indexing records; (5) promoting and providing access to users; and (6) revising, updating, and deleting items. (20 Points)

D. Institutionalization

The extent to which the applicant demonstrates the capacity to gain administrative support for the project, continue activities beyond the project period, and institutionalize the database into the agency organizational structure. (15 Points)

E. Management

The extent to which the applicant demonstrates the capacity to provide adequate and appropriate staff and equipment resources. (15 Points)

F. Quality Assurance

The extent to which the quality assurance plan is adequate and appropriate for maintaining accurate data entry, descriptive abstracts, and consistent indexing of database records. (10 Points)

G. Evaluation

The extent to which the evaluation plan determines the effectiveness of the database and achievement of stated objectives. (10 Points)

H. Budget

The extent to which the budget is reasonable and consistent with the intended use of the program funds. (Not Weighted)

Noncompeting Continuation Application Content

In compliance with 45 CFR 74.121(d) and 92.10(b)(4), as applicable, noncompeting continuation applications submitted within the project period need only include:

A. A brief progress report that describes the accomplishments of the previous budget period.

B. Any new or significantly revised items or information (objectives, scope of activities, operational methods, evaluation, etc.) not included in the Year 01 application.

C. An annual budget and justification. Existing budget items that are unchanged from the previous budget period do not need rejustification. Simply list the items in the budget and indicate that they are continuation items. Supporting justification should be provided where appropriate.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date. Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305. This should be done no later than 60 days after the application deadline date. The granting agency does not guarantee to ''accommodate or explain'' for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mail Stop E–18, Atlanta, GA 30305 on or before July 1, 1997.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Glynnis D. Taylor, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Atlanta, GA 30305, telephone (404) 842–6593, fax (404) 842–6513, or Internet or CDC WONDER electronic mail at gld1@cdc.gov.

Programmatic technical assistance may be obtained from Kathryn Sunnarborg or William Thomas, Technical Information Specialist, Technical Information and Editorial Services Branch, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), Mailstop K–13, 4770 Buford Highway, NE., Atlanta, GA 30341–3724, telephone (770) 488–5080.

Please refer to Announcement Number 766 when requesting information and submitting an application.

You may obtain this and other announcements from one of two sites on the actual publication date: CDC's homepage at http://www.cdc.gov or the Government Printing Office homepage (including free on-line access to the **Federal Register** at http://www.access.gpo.gov).

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) referenced in the ''Introduction'' through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 16, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–13422 Filed 5–21–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Government-Owned Inventions; Availability for Licensing

AGENCY: Office of Technology Transfer, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

The inventions named in this notice are owned by agencies of the United

States Government and are available for licensing in the United States (U.S.) in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Marjorie Hunter, Licensing Specialist at the Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Mailstop E–67, 1600 Clifton Rd., Atlanta, GA 30333, telephone (404) 639–6271; facsimile (404) 639–6266. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods and Compositions for an Artificial Lung Organ Culture System

Quinn, F. D.; Birkness, K. A.
Filed 23 September 94
Serial No. 08/679,081 (Ref # E–14)

Methods have been developed creating an artificial lung culture system, comprised of multiple human cell layers, for studying the passage of pathogens and chemical substances through the organ. The system is comprised of an endothelial cell layer and an alveolar epithelial cell layer oriented on either side of, and in direct contact with, an artificial microporous membrane. This stable culture system provides a more complex system for study than simple monolayers of human cells or animal models. The culture system is easily maintained without the use of antibiotics and is viable for longer periods of time than other models. (*Portfolio:* Human Organ, Tissue Culture, Liver.)

Infectious cDNA Clones for Dengue Virus: Strain 16881 and Live Attenuated Vaccine Derivative, Strain PDK–53

Kinney, R. M.; Gubler, D. J.; Trent, D. W.; Halstead, S. B.; Chang, J.; Butrapet, S.; Bhamarapravati, N.
Filed 7 June 95
Serial No. 08/483,292 (Ref # E–132–95/0)

A quadravalent vaccine which evokes immunity against all four serotypes of dengue virus comprising DEN–2 PDK–53 infectious clone derivative, DEN–2/1, DEN–2/3, or DEN–2/4 viruses, and related methods of immunization are described in this invention. The invention also provides a method of cloning and sequencing a cDNA copy of an entire RNA genome of the PDK–53 vaccine derivative of dengue 2 virus, strain 16681, which can be used to engineer new dengue vaccines as well as recombinant chimeric viruses. This invention provides a host cell with multiple constructs of protein encoded by several nucleotide sequences. (*Portfolio:* Vector-borne Infectious Diseases, Vaccine, Dengue, Chimeric Viruses.)

SecA Gene of Mycobacterium Tuberculosis and Related Methods and Compositions

Quinn, F. D.; Owens, M. H.; King, C. H.
Filed 22 February 95
Serial No. 08/394,646 (Ref # E–066–95/0)

This invention includes an isolated nucleic acid encoding a SecA protein of *Mycobacteria tuberculosis.* This nucleic acid can be a native coding sequence for the SecA protein or any alternative coding sequence for the SecA protein of *M. Tuberculosis.* An isolated fragment of the secA gene that is specific for *M. Tuberculosis* is also provided. A purified SecA protein of *M. Tuberculosis* which comprises the sequence set forth in the Sequence Listing as SEQ ID NO: 2 is provided. Fragments of the *M. Tuberculosis* SecA protein, a purified mutant SecA protein of *M. Tuberculosis,* and a purified mutant *M. Tuberculosis* expressing the mutant SecA protein are provided in the invention.

The invention provides methods of screening for putative *M. Tuberculosis* virulence factors translocated by the SecA protein. In one example of the method (the method comprises: inhibiting the translocation ATPase activity of the *M. Tuberculosis* SecA protein, and detecting the accumulation of precursor forms of proteins in the cytoplasm of the *M. Tuberculosis* cells) the accumulation of a precursor indicating the presence of a translocation ATPase activity of the *M. Tuberculosis* SecA protein can be inhibited by administering an amount of sodium azide to *M. Tuberculosis* cells or by mutating the secA gene so that it produces a non-lethal translocation ATPase deficient *M. Tuberculosis* mutant.

Treating HIV Infection by Inhibiting Bcl–2

Sandstrom, P. A.; Folks, T. M.
Filed 29 January 96
Serial No. 08/593,407 (Ref # E–102–95/0)

This invention provides a method of treating an HIV infection by inhibiting Bcl–2 expression or activity. This invention also provides a method of screening for a compound that inhibits HIV replication. This invention also provides a cell line transfected with a nucleic acid that encodes Bcl–2, wherein the cell line expresses bcl–2, and the cell line is infected with HIV. (*Portfolio:* HIV, AIDS, Viral Infection, Cellular Biology.)

Methods for Sensitive Detection of Reverse Transcriptase Activity

Heneine, W.; Folks, T. M.; Switzer, W. M.; Yamamoto, S.
Filed 27 January 95
Serial No. 08/379,851 (Ref # E–232–93/0)

This invention provides a method for detecting a retrovirus in a biological sample by identifying the presence of the enzyme reverse transcriptase (RT). This RT assay employs a PCR-based amplification system to detect a known cDNA product of the RT reaction. This invention is highly sensitive and specific and requires no knowledge of viral genomic sequence. Retroviruses that previously would have gone undetected may now be identified. (*Portfolio:* PCR, Reverse Transcriptase, Retrovirus, Diagnosis.)

Nucleotide Sequences of New Hantavirus—''Bayou Virus''

Nichol, S.; Morzunov, S.; Ksiazek, T.; Rollin, P.; Spiropoulou, C.
Filed 17 February 95
Serial No. 08/390,888 (Ref # E–183–93/2)

Nucleotide sequences of the M and S segments of the Louisiana virus genome have been identified. Included are several different methods of detecting the ''Bayou'' hantavirus and isolated nucleic acids specific for the ''Bayou'' hantavirus. Purified antigenic polypeptides and antibodies that specifically bind to the ''Bayou'' hantavirus or those polypeptides are provided. (*Portfolio:* Hantavirus, Bayou.)

Nucleic Acids of a Novel Hantavirus and Reagents for Detection and Prevention of Infection. The ''Sin Nombre'' Hantavirus

Rollin, P.; Elliott, L.; Ksiazek, T.; Nichol, S.
Filed 24 June 94
Serial No. 08/569,242 (Ref # E–183–93/3)

This invention describes a nucleotide sequence for a new hantavirus, referred to as ''Sin Nombre'' hantavirus, which is the causative agent of hantavirus pulmonary syndrome. A method of detection of the ''Sin Nombre'' hantavirus and an associated method of prevention of infection is provided. The

''Sin Nombre'' virus strain was previously known as the ''Muerto Canyon'' hantavirus. (*Portfolio:* Hantavirus, Diagnosis.)

The Black Creek Canal Strain of Hantavirus and Methods of Detection and Prevention of Infection Therefrom

Nichol, S. T.; Elliott, L.; Ksiazek, T. G.; Morzunov, S.; Ravkov, E.; Rollin, P. E.
Filed 17 February 95
Serial No. 08/390,361 (Ref # E–183–93/4)

The Black Creek Canal strain of hantavirus, which is responsible for a case of hantavirus Pulmonary Syndrome in Florida, is provided. The virus was isolated from a rodent and is genetically different at the nucleotide level from the Muerto Canyon virus. The invention also provides purified polypeptides encoded by the nucleic acids, purified antibodies that bind the hantavirus, and describes methods of detection and prevention. (*Portfolio:* Hantavirus, Vaccine, Black Creek Canal Strain.)

Method and Composition for Diagnosing Cat Scratch Disease and Bacillary Angiomatosis Caused by Rochalimaea Henselae (Now Referred to as Bartonella Henselae)

Regnery, R. L.; Anderson, B.E.
Patent Issued: 21 March 95
Patent No. 5,399,485 (Ref # E–048–92/0)

This invention provides a method of diagnosing cat scratch disease and bacillary angiomatosis by detecting the presence of *Bartonella henselae* or an immunogenically specific determinant thereof in humans or animals. Also provided is a vaccine comprising an immunogenic amount of a nonpathogenic *Bartonella henselae* and a pharmaceutically acceptable carrier. (*Portfolio:* Vaccine, Cat Scratch Disease, Bartonella.)

Method for Detection of a New Marker Associated With Hepatitis Delta Virus Infection

Fields, H. A.; Khudyakov, Y.; Favorov, M.
Patent Issued: 29 August 95
Patent No. 5,445,932 (Ref # E–069–92/0)

Reagents and methods for the detection of a marker which is associated with severe forms of hepatitis delta have been developed. This invention detects the presence of anti-HDAg' antibodies in a biological sample. It also describes a vaccine comprised of immunogenically active HDAg' polypeptides in a pharmaceutically acceptable carrier. (*Portfolio:* Hepatitis Delta, Vaccine, Diagnosis.)

DNA Sequence Encoding a Cynomolgus Monkey Hepatitis A Virus Capsid Protein

Nainan, O. V.; Margolis, H. S.; Robertson, B. H.; Brinton, M. A.; Ebert, J. W.
Patent Issued: 4 July 95
Patent No. 5,430,135 (Ref # E–089–91/1)

This invention relates to substantially pure preparations of the cynomolgus monkey hepatitis A viral isolates CY–145 and CY–55/JM–55, which may be used in the prevention of hepatitis A in animals. This invention provides a virus that may be adapted in a cell-line suitable for human vaccine development or may be cloned into an expression vector in which the cDNA coding for the capsid region of the virus may provide a virus-like antigen which could substitute for the whole virus. (*Portfolio:* Hepatitis A, Diagnosis, Vaccine.)

Nucleic Acid Probes and Methods for Detecting Candida DNA Cells in Blood

Lot, T. J.; Morrison, C. J.; Reiss, E.; Lasker, B.; Zakroff, S.
Patent Issued: 20 June 95
Patent No. 5,426,027 (Ref # E–118–93/0)

An isolated double-stranded nucleic acid sequence specific for *Candida albicans*, as well as ITS2 sequences for *C. Parapsilosis, C. Tropoicalis, C. Glabrata* and *C. Krusei*, is provided. This invention also contemplates an isolated nucleic acid that specifically hybridizes with, or selectively amplifies, a nucleic acid of *C. albicans*. These sequences may be used in a rapid method of diagnosing systemic candidiasis in patients by detecting *C. albicans* in blood samples with concentration as low as 10 cells per ml. (*Portfolio:* Nucleic Acid Sequencing, Candida, Diagnostics.)

Ear Based Hearing Protector/ Communication System

Franks, J. R.; Sizemore, C. W.; Dunn, D. E.
Patent Issued: 20 June 95
Patent No. 5,426,719 (Ref # E–154–91/0)

A combination hearing protector and communication device which may be incorporated into earmuffs/earplugs has been developed. The system allows dual channels and does not compromise the noise-reducing characteristics of normal earmuffs or earplugs. The system incorporates an independent transmission channel with the wearer having the possibility of receiving the same channel as other wearers. (*Portfolio:* Ear Protection, Communication, Hearing Safety.)

PsaA

Russell, H.; Sampson, J.; O'Connor, S.
Patent Issued: 6 June 95
Patent No. 5,422,427 (Ref # E–157–91/0)

The patent claims a DNA sequence encoding a pneumonacoccal surface adhesin A protein (PsaA), formerly designated as pneumococcal fimbrial protein. This sequence may be utilized to relates to produce a PsaA polypeptide. The sequence may also be utilized to design diagnostics for measuring the amount of PsaA contained in a sample. Vaccines which may be efficacious in adults or children may be developed using the sequence or polypetides. (*Portfolio:* Vaccine, Diagnosis, Pneumococal Surface Adhesin A Protein.)

Streptococcus Pneumoniae 37–KDa Surface Adhesin A Protein

Sampson, J.; Russell, H.; Tharpe, J.; Ades, E.; Carlone, G.
Filed 17 September 1996
Serial No.08/715,131 (Ref # E–157–91/4)

This invention provides the isolated nucleic acid encoding the 37–kDa protein of *Streptococcus pneumoniae* designated pneumococcal surface adhesin A protein (PsaA), formerly designated as pneumococcal fimbrial protein. This invention relates to purified polypetides encoded by the sequence and a method of measuring the amount of PsaA contained in a sample. This invention also includes a vaccine that may be efficacious in adults or children. (*Portfolio:* Vaccine, Diagnosis, Pneumococal Surface Adhesin A Protein.)

Use of Human Immortalized Endothelial Cells to Isolate and Propagate Ehrlichia chaffeensis and Ehrlichia canis

Dawson, J. E.
Patent Issued: 28 March 95
Patent No. 5,401,656 (Ref # E–155–91/0)

This invention provides a purified immortalized human endothelial cell infected with *Ehrlichia Chaffeensis* or *Ehrlichia canis*. The invention provides a method for simultaneously screening a human subject for *E. Chaffeensis* or *Rickettsia rickettsii*. Also provided is a method of culturing *E. chaffeensis* and *E. Canis*. (*Portfolio:* Diagnosis, Ehrlichiosis, Cell Culture.)

Immunoreactive HTLV–I/II and POL Peptides

Lal, R. B.
Patent Issued 3 January 1995
Patent No. 5,378,805 (Ref # E–172–90/0)

This invention relates to a peptide having specific immunoreactivity to antibodies to HTLV–I, HTLV–II derived from the structural gene products from groups consisting of Env–1, Env–2,

Env–5, Gag–1a, and Pol–3. This invention is further directed to an immunoassay method for the detection of antibodies, a peptide composition containing these peptides, and a vaccine. (*Portfolio:* HTLV, Vaccine, Diagnostics.)

Methods and Compositions for Diagnosing HTLV–1 Associated Myelopathy and Adult T-Cell Leukemia

Rudolph, D. L.; Lal, R. B.
Patent Issued 30 May 1995
Patent No. 5,420,244 (Ref # E–206–93/0)

This invention provides antigenic peptides derived from immunodominant epitopes of the HTLV–I *tax* or *rex* proteins that are immunoreactive with antibodies associated with disease in HTLV–I infected subjects. This invention provides peptides corresponding to the immunodominant epitopes of the *rex* regulatory protein of HTLV–I. This invention provides methods for diagnosing HTLV–I associated myelopathy. This invention also provides methods for diagnosing adult T-cell leukemia. (*Portfolio:* HTLV–I, HIV, Antibodies, HAM [HTLV–I Associated Myelopathy], T-cell Leukemia, Diagnosis.)

Isolation of Diagnostic Glycoproteins to Taenia Solium, Immunoblot-assay and Method for the Detection of Human Cysticercosis

Tsang, V. C. W.; Brand, J.; Boyer, A.; Wilson, M.; Schantz, P.; Maddison, S.
Patent Issued 11 October 94
Patent No. 5,354,660 (Ref # E–185–88/1)

This invention is a method and a kit for diagnosing active human neurocysticercosis utilizing an immunoblot assay. This method allows diagnosis of neurocysticercosis by the detection antigens of larval origin. This invention improves on the specificity and sensitivity of the disc method achieving 98% sensitivity and 100% specificity. This allows the detection of antibodies in the serum or cerebrospinal fluid. (*Portfolio:* Larval Detection, Taenia solium, Neurocysticercosis, Diagnosis.)

Exchangeable Template Reaction

Khudyakov, Y.; Fields, H.
Patent Issued: 2 April 96
Patent No. 5,503,995 (Ref # E–184–91/1)

This invention provides a method of making synthetic DNA of any desired sequence. This invention can be used to make an array of DNA having specific substitution in a known sequence which are expressed and screened for improved function. This invention provides a method for the synthesis of DNA based on a cyclic mechanism of combining deoxyoligonucleotides. Also included is a kit comprising a series of unique synthesized single-stranded deoxypolynucleotides which can be enzymatically treated to form a unique 3′ single-stranded protrusion for selective cyclic hybridization with another unique single-stranded deoxypolynucleotide of the series.(*Portfolio:* DNA, DNA Synthesis.)

Sequences of the Hemagglutinins of Recent Strains of Influenza Type B virus

Rota, P. A.; Hemphill, M. L.

Patent Issued: 20 December 94

Patent No. 5,374,717 (Ref # E–224–92/0)

This invention provides sequence analyses for recent strains of Influenza Type B virus. This invention also provides a method for vaccinating a mammal against influenza type B. This invention also provides a method of detection and diagnosis of an infection with influenza type B virus. (*Portfolio:* Virus, Influenza Type B, Vaccine.)

Method for Detecting Isocyanates

Streicher, R. P.

Patent Issued 11 October 94

Patent No. 5,354,689 (Ref # E–215–92/0)

This invention provides a method for detecting the presence of isocyanate in a sample. Also, the invention provides a method of quantifying the total isocyanate presence by quantifying the reaction product. This invention is particularly well-suited to the detection of isocyanates in air. (*Portfolio:* Isocyanate, Detection.)

Portable Spirometer With Improved Accuracy

Hankinson, J. L.; Viola, J. C.; Ebeling, T. H.

Patent Issued 8 October 96

Patent No. 5,562,101 (Ref # E–030–92/1)

This invention is a spirometric measurement device with an arrangement for computation of a dynamic correction factor to compensate for temperature-related changes. This invention improves the accuracy by increasing the analog-to-digital conversion resolution, by modifying the dithering process, and by compensating for the inherent transducer temperature drift. This invention provides for a multi-functional, downloadable, flexible spirometric device, that requires no disassembly with improved quality control. (*Portfolio:* Spirometric, Lung Capacity, Respiratory Function.)

Dated: May 16, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–13427 Filed 5–21–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Grant of Exclusive License: Prophylactic Use of Pneumococcal Surface Adhesin A Protein as a Vaccine

AGENCY: Office of Technology Transfer, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the Centers for Disease Control and Prevention (CDC), Technology Transfer Office, Department of Health and Human Services (DHHS), is contemplating the grant of a worldwide, limited field of use, exclusive license to practice the inventions embodied in the patent and patent applications referred to below to Connaught Laboratories, Inc. (CLI), having a place of business in Swiftwater, Pennsylvania. The patent rights in these inventions have been assigned to the government of the United States of America. The patent and patent applications to the licensed are:

Title: Pneumococcal Fimbrial Protein A
U.S. Patent Application Serial No.: 07/791,377
Filing Date: 09/17/91
Domestic Status: Patent No.: 5,422,427
Issue Date: 06/06/95

Title: Pneumococcal Fimbrial Protein A and Vaccines
U.S. Patent Application Serial No.: 08/222,179
Filing Date: 09/17/96

Title: Pneumococcal Fimbrial Protein A
U.S. Patent Application Serial No.: 08/356,106
Filing Date: 12/15/94

Title: Streptococcus Pneumoniae 37 kDa Surface Adhesin A Protein
U.S. Patent Application Serial No.: 08/715,131
Filing Date: 09/17/96

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

Pneumococcal infections cause invasive disease (commonly known as ''pneumonia''), meningitis and otitis media (commonly known as a ''middle ear infection''). Invasive disease may occur at any age, but is particularly dangerous in elderly patients. Meningitis is a dangerous result of pneumococcal infection and can occur in persons of all ages. Otitis media is common in children under age two. It is estimated that between 33 percent and 50 percent of all otitis media cases are caused by pneumococcal infections. Otitis media may resolve within three to four days without medical intervention, while more serious cases require a course of antibiotics. Approximately forty-seven million cases of otitis media require some form of medical intervention annually in the seven major markets for pharmaceutical products (U.S., France, Germany, Italy, Spain, U.K. and Japan).

CDC scientists have discovered a particular surface protein of pneumococcus designated pneumococcal surface adhesin A protein (''PsaA''). Their discoveries include the amino acid sequence and the polypeptide formed by said sequence. CLI is proposing that through incorporation of PsaA it will be able to produce a vaccine which is immunogenic in children without the requirement of a conjugated toxoid.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments, and other materials relating to the contemplated license should be directed to Marjorie Hunter, Technology Licensing Specialist, Office of Technology Transfer, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–67, Atlanta, GA 30333, telephone: (404) 639–6271; facsimile: (404)639–6266. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by CDC within sixty days of this notice will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552. A signed Confidential Disclosure Agreement will be required to receive a copy of any pending patent application.

Dated: May 16, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–13426 Filed 5–21–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cooperative Agreement to Support the Joint Institute for Food Safety and Applied Nutrition; Notice of Intent to Establish a Cooperative Agreement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to accept and consider a single-source application for the award of a cooperative agreement to the University of Maryland at College Park (UMCP). The cooperative agreement will support the Joint Institute for Food Safety and Applied Nutrition (JIFSAN) and a new FDA laboratory/office building to be constructed in College Park, MD. JIFSAN is to be colocated on the UMCP campus. Competition is limited to UMCP because the Food and Drug Administration Revitalization Act directed FDA to consolidate the Center for Food Safety and Applied Nutrition (CFSAN) and the Center for Veterinary Medicine (CVM); and related congressional action directed the Centers to be located in Prince George's County, MD. The cooperative agreement is intended to create a partnership that allows for a more efficient use of research resources and thereby enhances the quality of food safety and nutrition research.

ADDRESSES: Applications may be obtained from, and should be submitted to, Robert L. Robins, Grants Management Officer, Office of Facilities, Acquisition and Central Services (HFA–520), Food and Drug Administration, Park Bldg., 5600 Fishers Lane, rm. 3–40, Rockville, MD 20857, 301–443–6170. Applications hand carried or commercially delivered should be submitted to Robert L. Robins, Park Bldg., 12420 Parklawn Dr., rm. 3–40, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice contact: Robert L. Robins (address above).

Regarding the programmatic aspects contact: Elizabeth M. Calvey, CFSAN (HFS–345), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–205–4716.

SUPPLEMENTAL INFORMATION:

I. Background

FDA is announcing its intention to accept and consider a single-source application from UMCP for a cooperative agreement to support the JIFSAN. FDA's authority to enter into grants and cooperative agreements is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance No. 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public.

UMCP's application for this award will undergo dual peer review. An ad hoc review panel of nonFederal experts (i.e., in areas associated with food safety, nutrition, and risk assessment) will review and evaluate the application based on its scientific merit. A second level review will be conducted by the National Advisory Environmental Health Sciences Council.

JIFSAN was established between FDA and the University of Maryland (the University) in April 1996 through a formal memorandum of understanding (MOU) to create a partnership that allows for more efficient use of research resources and thereby enhances the quality of food safety and nutrition research and public health policy. As the role of FDA research scientists in regulatory activities increases, it is vital that these scientists have ready access to very specialized research facilities and expertise (e.g., Center of Biomolecular Structure and Organization) in order to expedite regulatory policy and decisions (e.g., petition review). As described in the MOU of April 1996, JIFSAN is to be a jointly administered, multidisciplinary, research program. JIFSAN was established as part of FDA's consolidation project affecting CFSAN and CVM.

FDA's consolidation project was authorized through the Food and Drug Administration Revitalization Act (Pub. L. 101–635). The Treasury, Postal Service and General Government Appropriations Act, 1992 (Pub. L. 102–141) directed that new construction for the consolidation of FDA occur in Montgomery and Prince George's Counties, Maryland. The Congressional Conference Report (H. Rept. 102–234, 1991) related to this law further specifies that FDA begin consolidating its current programs into two campuses:

(1) A headquarters campus to include administrative and drug research facilities, in Montgomery County, and (2) a food and veterinary sciences campus in Prince George's County. To this end, the General Services Administration, through its site selection process, purchased land in the vicinity of the College Park metro rail station intended as the location for consolidation of CFSAN and CVM.

In the United States, there is no single center for research and development of expertise and analytical methodology in food safety and applied nutrition. In a January 1997 radio address, the President emphasized the need for Government, academia, industry, and consumers to work together to improve the safety of the food supply. FDA is in the vanguard of this effort, establishing the National Center for Food Safety and Technology (NCFST) with the Illinois Institute of Technology in 1988, and now, establishing JIFSAN with UMCP. The missions of NCFST and JIFSAN are mutually dependent. The focus of NCFST is food technology, specifically the effect of innovative food processing and packaging technologies on the safety of the food supply. The focus of JIFSAN is food safety and nutrition, specifically as related to risk analysis, applied microbiology, natural toxins, chemical contaminants, and an integrated program of study of food composition and nutrition.

II. Establishment of JIFSAN

A. Concept

FDA believes that the cooperative research program with UMCP to be established at JIFSAN will provide opportunities to leverage resources so that important national and international problems in food safety and nutrition can be addressed in a timely manner. Further, FDA believes that cooperative research through JIFSAN will promote the efficient use of the complementary resources (e.g., major instrumentation, space, information and computer technologies, etc.) of both parties. All research will be related to FDA program requirements in food safety and nutrition. Other Federal and State agencies, industry, consumer and trade groups, and international organizations with mutual interests will have opportunities for collaboration. FDA believes that the cooperative research at JIFSAN will enhance the agency's food safety and nutrition programs (e.g., risk assessment, microbiology, food contaminants including natural toxins, food composition, foods for special dietary uses, and advanced studies in micronutrients). The agency and UMCP intend to design the collaborative effort to:

(1) Develop a critical mass of scientific expertise necessary to address ongoing and increasingly complex key public health issues, to provide early warning of emerging problems, to provide support during periodic emergencies and crisis situations (e.g., microbial contamination of apple juice), and to provide scientific expertise in close proximity to FDA administrative offices to expedite regulatory policy and decisions (e.g., petition review). (All official regulatory activities, however, will be performed by FDA employees only);

(2) Provide for more efficient use of current resources devoted to risk assessment research and related activities (e.g., surveillance, modeling, etc.), enhancing the safety of the food supply;

(3) Develop more effective methods for communicating risk associated with both microbial and chemical hazards to the general public by going beyond the study of the science to the study of how that science is heard and understood (risk communication);

(4) Share resources to enhance the research infrastructure and provide for effective use of increasingly sophisticated scientific equipment with high acquisition, installation, and maintenance costs and the corresponding expertise of both parties; and

(5) Establish mechanisms for exchange of technical information and scientific concepts between FDA and other sectors of the food safety and nutrition community (e.g., other Federal and State agencies, industry, academia, consumer and trade groups, and international organizations).

B. Project Emphasis

The purpose of JIFSAN is to develop collaborative partnerships to augment and enhance FDA's scientific expertise in food safety and nutrition. The collaborative work will supplement FDA scientific expertise needed to address increasingly complex problems in such areas as risk assessment, food composition analyses, and other food safety related areas to include: Food safety related to emerging pathogens, contaminants (e.g., industrial chemicals and toxic elements), and natural toxins (e.g., mycotoxins); regulatory science supporting the review of food ingredients and the development of international standards; and nutrition and clinical studies related to nutrient quality, safety, labeling, and patterns of consumer behavior. The downsizing of FDA's food safety and nutrition program has reduced present expertise in some of these areas below critical levels. This loss of expertise has required the agency to find other ways of expanding its science base, such as establishing JIFSAN, a unique partnership between Government and academia.

JIFSAN will be designed to provide the collaborative environment and expertise necessary to conduct advanced research in key areas such as risk analysis (risk assessment, risk management, and risk communication). Risk analysis requires a multidisciplinary approach. The needs of risk analysis are well beyond the core sciences of chemistry, microbiology, toxicology, and traditional food science concepts of food safety and applied nutrition. Risk analysis must draw upon a number of other disciplines, including computer sciences, mathematics and statistics, philosophy of science, economics, communications, and law. The advancement of risk assessment methodologies will ultimately promote efficient and effective risk management (e.g., rational regulation of public health policy) and risk communication approaches. Conducting advanced research in risk analysis will promote the development of risk-based, scientifically supported, safety standards that will result in a safer food supply and can be used to identify priorities in order to more effectively apply available resources.

This collaborative effort will permit the sharing of complementary resources (e.g., major instrumentation, space, and information and computer technologies) and create opportunities to leverage the shrinking resources of both parties so that important national and international issues in food safety and nutrition can be addressed in a timely manner. Many of these issues (i.e., emerging pathogens, natural toxins, toxic element contamination, fortification policy, safety of dietary supplements, etc.) can only be addressed with close cooperation of the public and private sectors. Combining CFSAN's major instrumentation resources and corresponding expertise with UMCP will enhance FDA's access to state-of-the-art instrumentation to conduct research at the forefront of food safety and nutrition sciences. The direct access to the vast library resources on the College Park campus will permit CFSAN to redirect its program from maintaining a classical library system to providing on-line data base access to pertinent scientific literature. The complementary nature of these shared UMCP and FDA facilities will enhance the research infrastructure of both

institutions and reduce costs by avoiding unnecessary duplication. A close working relationship of FDA and University personnel will provide enhanced scientific expertise in advanced techniques for the characterization of biotechnology products as well as expand the current capabilities in research to support regulatory actions and respond to emergency situations.

C. Summary

FDA believes that JIFSAN is a sound investment in the future public health of American consumers. It provides an opportunity for extensive cooperation with University scientists, and it will stimulate collaborative efforts to ensure a safe food supply contributing significantly to implementation of the goals for Government, academia, industry, and consumers to work together to improve food safety. FDA deals with an increasing number of critical and complex food safety issues. In order for FDA to respond rapidly in these situations it requires that FDA scientists be in close proximity with a source of complementary and specialized scientific expertise and facilities to expedite regulatory policy and decisions. The MOU between FDA and UMCP provides the essential foundation for a vigorous, high quality scientific research program to support sound regulatory policy and performance.

The public and FDA will both benefit from the type of collaboration possible at JIFSAN. Scientists from each sector would bring a special perspective to advancing the knowledge of food safety and nutrition sciences. Interaction among those scientists will stimulate creativity and innovation. FDA's participation in this venture will promote a greater awareness and understanding of regulatory science and practice among academic scientists thereby providing economic and program benefits to both. In summary, this collaboration between FDA and UMCP provides an efficient means of remaining current with scientific and technical accomplishments in the areas of food safety and applied nutrition. This will ensure that FDA continues to be best positioned to carry out its statutory responsibilities, respond rapidly in a crisis situation, protect, promote, and enhance the health of the American People.

III. Mechanism of Support

A. Award Instrument

Support for this program, if granted, will be in the form of a cooperative agreement. In 1997, FDA is providing approximately $500,000.00 for this award. It is anticipated that funding will increase in subsequent years. The award will be subject to all policies and requirements that govern the research grant programs of the Public Health Service (PHS), including the provisions of 42 CFR part 52, 45 CFR part 74, and the PHS Grants Policy Statement.

B. Length of Support

The length of support will be 1 year with the possibility of an additional 4 years of noncompetitive support. Continuation, beyond the first year, will be based upon performance during the preceding year and the availability of Federal fiscal year appropriations.

IV. Reasons for Single-Source Selection

FDA believes that there is compelling evidence that UMCP is uniquely qualified to fulfill the objectives of the proposed cooperative agreement. The University is in close proximity to the congressionally directed location of FDA's consolidation of CFSAN and CVM in Prince George's County, MD. The University has vast resources, which complement and greatly expand FDA's research and scientific resources. UMCP is the Washington region's most comprehensive research institution with numerous academic programs relevant to FDA's mission and the resources to support CFSAN's areas of interest, including: Microbiology, chemistry, food science, agriculture, public policy, risk assessment, computational science, economics, and survey methodology. The University serves as the primary center for graduate study and research and provides undergraduate instruction across a broad spectrum of academic disciplines. The University extends its vast intellectual resources to the community through innovative projects designed to serve individuals, governments, and the private sector throughout the State of Maryland, the nation, and the international community. In 1988, the General Assembly of Maryland designated UMCP as the flagship institution for the University of Maryland System which consists of 11 campuses across the State and offers programs at some 200 sites worldwide.

The University is developing four central instrumentation facilities to provide effective use of state-of-the-art scientific instrumentation with high acquisition, installation, and maintenance costs to conduct research at the forefront of science. The central facilities will be the Nuclear Magnetic Resonance Laboratory, Biological Imaging Laboratory, Electron Microscopy Laboratory, and Mass Spectrometry Laboratory. These instrumentation centers will complement CFSAN's resources and expertise and facilitate access to these resources to meet FDA's food safety and nutrition program needs. In addition, the vast library resources on the College Park campus will permit FDA direct access to periodicals and books relevant to the program, as well as access to the collection of libraries on all campuses in the University of Maryland System and use of over 60 automated reference tools in the libraries.

Acknowledging the importance of an interdisciplinary approach to knowledge, the University maintains organized research units outside the usual department structures (i.e., Department of Chemistry and Biochemistry and Department of Molecular, Cell, and Microbial Biology, etc.). Through participation in collaborative projects, FDA will have access to these additional University resources. Several of these research units will complement or meet the programmatic needs of FDA. These units include the Center for Research in Public Communication where cooperative projects related to risk communication studies could be developed, the Survey Research Center and the Institute for Philosophy and Public Policy, which will promote more efficient development and dissemination of public policy, and the Maryland Fire and Rescue Institute, which will facilitate the maintenance of emergency response readiness credentials of the FDA Safety Staff who are responsible for maintaining and ensuring safety and regulatory compliance at FDA facilities where collaborative research is conducted.

Collaboration between the public and the private sector is an efficient means for both FDA and the University to remain current with scientific and technical accomplishments from a food safety and applied nutrition perspective. These collaborative programs will produce generic knowledge and expertise to be used by all segments of the food safety and nutrition community, as well as by public health organizations, other Federal agencies, and academic institutions in the performance of their roles. Harmonizing regulatory activities is but one example of the need for, and use of, this food safety and nutrition knowledge and expertise. The partnership between FDA and UMCP will provide both the technical and educational expertise for effective creation of technology transfer mechanisms that will facilitate the movement of new technology and

provide fundamental food safety and nutrition information to the public and private sector.

V. Reporting Requirements

Program progress reports and financial status reports will be required annually, based on date of award. These reports will be due within 30 days after the end of the budget period. A final program progress report and financial status report will be due 90 days after expiration of the project period of the cooperative agreement.

VI. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in the cooperative agreement award. Accordingly, FDA will have substantial involvement in the program activities of the project funded by the cooperative agreement. Substantive involvement includes, but is not limited to, the following:

(1) FDA will appoint a project officer or coproject officers who will actively monitor the FDA-supported program under this award.

(2) FDA shall have prior approval on the appointment of all key administrative and scientific personnel proposed by the grantee.

(3) FDA will be directly involved in the guidance and development of the program and of the management structure for the program.

(4) FDA scientists will participate, with the grantee, in determining and carrying out the methodological approaches to be used. Collaboration will also include data analysis, interpretation of findings, and, where appropriate, coauthorship of publications.

Dated: May 15, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–13446 Filed 5–21–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0183]

Bausch & Lomb, Inc.; Premarket Approval of Bausch & Lomb® Soflens66™ (alphafilcon A) Visibility Tinted Contact Lens for Extended Wear

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Bausch & Lomb, Inc., Rochester, NY, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the BAUSCH & LOMB® SofLens66™ (alphafilcon A) Visibility Tinted Contact Lens for Extended Wear. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 16, 1996, of the approval of the application.

DATES: Petitions for administrative review by June 23, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1744.

SUPPLEMENTARY INFORMATION: On June 28, 1996, Bausch & Lomb, Inc., Rochester, NY 14692–0450, submitted to CDRH an application for premarket approval of the BAUSCH & LOMB® SofLens66™ (alphafilcon A) Visibility Tinted Contact Lens for Extended Wear. The device is a soft (hydrophilic) contact lens and is indicated for daily wear or extended wear from 1 to 7 days between removals for cleaning and disinfection or disposal of lens, as recommended by the eye care practitioner. The lens is indicated for the correction of refractive ametropia (myopia and hyperopia) in not-aphakic persons with non-diseased eyes, exhibiting astigmatism of 2.00 diopters or less, that does not interfere with visual acuity.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this application was not referred to the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the application substantially duplicates information previously reviewed by this panel.

On December 16, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of the BAUSCH & LOMB® SofLens66™ (alphafilcon A) Visibility Tinted Contact Lens for Extended Wear states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 23, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs

(21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 22, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–13535 Filed 5–21–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Open Meeting for Representatives of Health Professional Organizations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing an open meeting with representatives of health professional organizations. The meeting will be chaired by Sharon Smith Holston, Deputy Commissioner for External Affairs. This meeting will provide participants an opportunity to hear a discussion on prescription (Rx) to over-the-counter (OTC) switches and the new OTC proposed labeling initiative.

DATES: The meeting will be held on Thursday, May 29, 1997, from 1:30 p.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Bethesda Holiday Inn, 8210 Wisconsin Ave., Bethesda, MD. Interested persons may register with Betty Palsgrove at 301–443–1652. Registrations also may be transmitted by FAX to 1–800–344–3332 or 301–443–2446.

FOR FURTHER INFORMATION CONTACT: Peter H. Rheinstein, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5470.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide an opportunity for representatives of health professional organizations and other interested persons to be briefed by senior FDA staff and to provide an opportunity for informal discussion on the switching of drug products from prescription to OTC status and on FDA's proposed regulation for labeling of OTC drug products, which would amend 21 CFR parts 201, 330, and 358 (62 FR 9024, February 27, 1997).

This public meeting is free of charge; however, space is limited. Registration for the meeting will be accepted in the order received and should be sent to the contact person listed above. Registration should include the name and title of the person attending and the name of the organization being represented, if any.

Dated: May 16, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–13447 Filed 5–21–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Science Advisory Board to the National Center for Toxicological Research

Date, time, and place. June 5 and 6, 1997, 9 a.m., Bldg. 12, conference room, National Center for Toxicological Research, Jefferson, AR.

Type of meeting and contact person. Open board discussion, June 5, 1997, 9 a.m. to 4:30 p.m.; open board discussion, June 6, 1997, 9 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; closed board deliberations, 12 m. to 1:30 p.m.; Ronald F. Coene, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3155, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Science Advisory Board to the National Center for Toxicological Research, code 12559. Please call the hotline for information concerning any possible changes.

General function of the board. The board advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs to fulfill regulatory responsibilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 26, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open board discussion. The board will be presented with draft reports, for review and discussion, from two site visit review teams: (1) On the Estrogen Knowledge Base Program, and (2) on the Information Management Program. Staff from the Analytical Methods Program will provide a progress report on the recommendations made by the Science Advisory Board. Also there will be discussion of an agenda for future program review site visits, an update from the Director, and a review of the progress the agency has made in establishing the Arkansas Regional Laboratory at the Jefferson, AR site.

A final agenda will be available on June 3, 1997, from the contact person.

Closed board deliberations. The board will discuss personal information concerning individuals associated with the research programs at the center, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(6)).

The Commissioner approves the scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Each public advisory committee meeting listed above may have as many

as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

FDA regrets that it was unable to publish this notice 15 days prior to the June 5 and 6, 1997, Science Advisory Board to the National Center for Toxicological Research meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Science Advisory Board to the National Center for Toxicological Research were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 16, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–13448 Filed 5–21–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0153]

Accidental Radioactive Contamination of Human Food and Animal Feeds; Draft of Recommendations for State and Local Agencies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Accidental Radioactive Contamination of Human Food and Animal Feeds: Recommendations for State and Local Agencies.'' This draft guidance would replace the ''Accidental Contamination of Human Foods and Animal Feeds: Recommendations to State and Local Agencies'' issued in 1982 to State and local agencies responsible for taking protective actions in the event that an incident causes the contamination of

human food or animal feeds. This draft guidance is intended to assist FDA in fulfilling its responsibility to issue guidance on planning actions for evaluating and preventing contamination of human food and animal feeds and to issue guidance on the control and use of these products should they become contaminated. The agency requests comments on this draft guidance.

DATES: Written comments by August 20, 1997.

ADDRESSES: Submit written requests for single copies of ''Accidental Radioactive Contamination of Human Food and Animal Feeds: Recommendations for State and Local Agencies'' to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (address above). Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Donald L. Thompson, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–0012, FAX 301–594–4760.

SUPPLEMENTARY INFORMATION:

I. Background

In 1982, FDA issued recommendations on accidental radioactive contamination of human food and animal feeds. Since 1982, significant advancements related to emergency planning have warranted updating the guidance document. The draft guidance includes: New scientific information and radiation protection philosophy, experience gained since 1982, and guidance developed by international organizations. In 1992, and again in 1994, drafts of the revised document were circulated for review by the staff of the principal Federal agencies involved in radiological emergency response and by a committee of the Conference of Radiation Control Program Directors.

These recommendations are intended to provide guidance to State and local agencies to aid in emergency response planning and execution of protective actions associated with production, processing, distribution, and use of human food and animal feeds accidentally contaminated with radionuclides. Limits, called derived intervention levels, are set on the radionuclide activity concentration permitted in food, and protective actions for reducing the amount of contamination are discussed. The recommendations are applicable to accidents at nuclear power plants and many other types of accidents where a significant radiation dose could be received as a result of consumption of contaminated food. The recommendations do not authorize or apply to deliberate releases of radionuclides that could result in contamination, nor do they apply to situations of a nonaccidental nature. These recommendations would rescind and replace the 1982 FDA recommendations.

II. Significance of a Guidance

A guidance document does not bind FDA or the public, and it does not create or confer any rights, privileges, or benefits for, or on, any person; however, it does represent the agency's current thinking on the subjects discussed therein. The draft guidance announced in this document represents the agency's tentative thinking of the subjects discussed therein.

III. Request for Comments

Interested persons may, on or before August 20, 1997, submit to the Dockets Management Branch (address above) written comments on the ''Accidental Radioactive Contamination of Human Food and Animal Feeds: Recommendations for State and Local Agencies.'' Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m and 4 p.m. Monday through Friday.

Dated: May 12, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–13376 Filed 5–21–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95D–0413]

Draft Guidance on the Content and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Germicides; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period on the notice announcing the availability of a draft guidance, which was published in the **Federal Register** of December 6, 1996 (61 FR 64755), entitled ''Guidance on the Content and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Germicides.'' The draft guidance provides specific directions to manufacturers regarding information and data that should be submitted to FDA in a premarket notification (510(k)) submission for a liquid chemical germicide.

DATES: Written comments by August 20, 1997.

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

FOR FURTHER INFORMATION CONTACT: Chiu S. Lin, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 6, 1996 (61 FR 64755), FDA announced the availability of a draft guidance entitled ''Guidance on the Content and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Germicides.'' The draft guidance provides specific directions to manufacturers regarding information and data that should be submitted to FDA in a premarket notification (510(k)) submission for a liquid chemical germicide. Interested persons were given until March 6, 1997, to submit written comments on the notice.

With the passage of the Food Quality Protection Act of 1996, the distribution of the draft guidance was delayed until it could be revised to reflect the regulatory changes. However, the revision has been more complex than

anticipated. Therefore, FDA has determined that the important health issues involved in the draft guidance provide good cause for reopening of the comment period on the original draft guidance in accordance with section 520(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(d)). FDA is reopening the comment period for an additional 90 days.

Interested persons may, on or before August 20, 1997, submit to the Dockets Management Branch (address above) written comments regarding the notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 7, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–13378 Filed 5–21–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0146]

A Primer on Medical Device Interactions With Magnetic Resonance Imaging Systems; Draft Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''A Primer on Medical Device Interactions with Magnetic Resonance Imaging Systems.'' The purpose of this document is twofold. It should serve to sensitize medical device reviewers to the meaning and ramifications of magnetic resonance (MR) safety or MR compatibility claims. It will also provide for FDA reviewers a background of MR theory and the effect the MR environment may have on medical devices.

DATES: Submit written comments on the draft guidance document by August 20, 1997.

ADDRESSES: Requests for single copies of the draft guidance document and any written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marlene Skopec, Center for Devices and Radiological Health (HFZ–133), Food and Drug Administration, 12721 Twinbrook Pkwy., Rockville, MD 20852, 301–443–3840.

SUPPLEMENTARY INFORMATION: FDA recognizes that there is an increasing number of medical device manufacturers seeking to make MR safe or MR compatibility claims for their devices. It is important that medical device reviewers are aware of the potential implications of these claims. With the advent of open magnetic resonance imaging (MRI) systems and interventional MR, the trend of making MR claims for medical devices will continue and accelerate. This draft guidance document is intended to serve as a general background document on medical device interactions in MRI systems. It is not intended to replace documents created that address specific devices or device areas.

A guidance document does not bind FDA or the public, and does not create or confer any rights, privileges, or benefits for or on any person; however, it does represent the agency's current thinking on the subjects discussed therein. The draft guidance document announced in this notice represents the agency's tentative thinking of the subjects discussed therein.

Interested persons may, on or before August 20, 1997, submit to the Dockets Management Branch (address above) written comments on ''A Primer on Medical Device Interactions with Magnetic Resonance Imaging Systems.'' Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. ''A Primer on Medical Device Interactions with Magnetic Resonance Imaging Systems'' and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 21, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–13377 Filed 5–21–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Reinstatement, with change, of previously approved collection for which approval has expired; *Title of Information Collection:* Medicaid Report on Payables and Receivables; *Form No.:* HCFA–R–199; *Use:* The Chief Financial Officers Act of 1990 requires government agencies to produce auditable financial statements. Form R–199 will collect accounting data from the States on Payables and Receivables; *Frequency:* Annually; *Affected Public:* State, local or tribal government; *Number of Respondents:* 57; *Total Annual Responses:* 57; *Total Annual Hours:* 171.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: Linda Mansfield, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 15, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–13387 Filed 5–21–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–668-B]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Post Laboratory Survey Questionnaire—Laboratory, and Supporting Regulation 42 CFR section 493; *Form No.:* HCFA–668-B; *Use:* This form will allow Laboratories to assess the CLIA survey process and report their satisfaction with the survey process. This information will help HCFA evaluate the survey process from the laboratory's prospective. *Frequency:* Biennially; *Affected Public:* Federal Government, Business or other for-profit, Not-for-profit institutions and, State, Local or Tribal Government.; *Number of Respondents:* 40,000; *Total Annual Responses:* 20,000; *Total Annual Hours:* 5,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 7, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–13397 Filed 5–21–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; ''A Native American Tribe With Low Alcoholism Prevalence: Transmission Analysis, Linkage Analysis and Gene/Environment Interactions (a 1 Tribe Study)''

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAA), National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously in the **Federal Register** on July 1, 1996, and allowed 60 days for public comment. There were no requests for additional information about this data collection activity, no public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after June 30, 1999, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: *Title:* 'A Native American Tribe with Low Alcoholism Prevalence: Transmission Analysis, Linkage Analysis and Gene/Environment Interactions (a 1 tribe study)'. *Type of Information Collection request:* NEW. Need and Use of Information Collection: The information proposed for collection in this study will be used by the NIAAA to define the prevalence in alcoholism and associated problems in tribes in which the rates of alcoholism have been reported to be widely divergent. Additional information will be collected on severe trauma and stress, alcohol availability and socioeconomic factors to identify how these variables interact with hereditary factors in the development of alcoholism and related problems.

Frequency of Response: One time. *Affected Public:* Individuals. *Type of Respondents:* Native American adults. *Estimated Number of Respondents:* 300. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours per Response:* 5.00. *And Estimated Total Annual Burden Hours Requested:* 1500. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

The annual burden estimates are as follows:

Type and number of respondents	Responses per respondent	Total responses	Hours	Total hours
Clients 300	1	300	5.00	1500
Total Number of Respondents: 300.				
Total Number of Responses: 300.				
Total Hours: 1500.				

Request for Comments

Comments are invited on: (a) whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Send written comments to Ms. Ronni Nelson, Laboratory of Neurogenetics, Division of Intramural Clinical and Biological Research, NIAAA, NIH, DANAC4 (Flow Labs), 12501 Washington Ave., Rockville, Maryland 20852.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH.

For further information: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Ms. Ronni Nelson, Laboratory of Neurogenetics, Division of Intramural Clinical and Biological Research (DICBR), NIAAA, DANAC4 (Flow Labs), 12501 Washington Ave., Rockville, Maryland 20852, or call non-toll-free number (301) 443–5781.

Comments due date: Comments regarding this information collection are best assured of having their full effect if received on or before June 23, 1997.

Dated: May 12, 1997.

Mary C. Dufour,

Acting Executive Officer, NIAAA.

[FR Doc. 97–13400 Filed 5–21–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, June 9, 1997. The meeting will be held at the National Institutes of Health, Rockledge II, Conference Room 9104, 6701 Rockledge Drive, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Clarice D. Reid, Executive Secretary, Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, NHLBI, Two Rockledge Center, Suite 10160, 6701 Rockledge Drive, Bethesda, Maryland 20892, (301) 435–0080, will furnish substantive program information, a summary of the meeting, and a roster of the committee members.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 19, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–13526 Filed 5–21–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke Division of Extramural Activities, Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: June 25, 1997.

Time: 8:00 a.m.

Place: Morehouse School of Medicine, Neuroscience Institute, 720 Westview Drive, S.W., Atlanta, GA 30310.

Contact Person: Dr. Lillian Pubols, Chief, Scientific Review Branch, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate a grant application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, biological Basis Research in the Neurosciences)

Dated: May 16, 1997.

LaVeen Ponds,

Acting NIH Committee Management Officer.

[FR Doc. 97–13524 Filed 5–21–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: Stem Cell Renewal and Lineage Commitment.

Date: June 26–27, 1997.

Time: 7:00 p.m.

Place: Embassy Row Hilton Hotel, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

Contact Person: Roberta Haber, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–25N, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8898.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: May 19, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–13525 Filed 5–21–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes on Aging; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Institute on Aging Initial Review Group Sociology Aging Review Committee.
Date of Meeting: June 8, 1997.
Time of Meeting: 6:00 to 8:45 p.m.
Place of Meeting: ANA Hotel, 2401 M Street, NW., Washington, DC 20037.
Purpose/Agenda: To evaluate and review grant applications.
Contact Person: Dr. Mary Ann Guadagno, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20814, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel Women's Health Initiative Minority Investigator Career Development Award.
Date of Meeting: June 8, 1997.
Time of Meeting: 9:00 to 10:00 p.m.
Place of Meeting: ANA Hotel, 2401 M Street, NW., Washington, DC 20037.
Purpose/Agenda: To review and evaluate application in response to RFA on Women's Health for minority investigators.
Contact Person: Dr. Mary Ann Guadagno, Scientific Review Administrators, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel NIA Small Grant Review—Economics.
Date of Meeting: June 9, 1997.
Time of Meeting: 9:00 a.m. to adjournment.
Place of Meeting: ANA Hotel, 2401 M Street, NW., Washington, DC 20037.
Purpose/Agenda: To review small grant applications in economics and demography.
Contact Person: Dr. Mary Ann Guadagno, Scientific Review Administrators, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel Sociology and Psychology in Aging Small Grant Applications.
Date of Meeting: June 9, 1997.
Time of Meeting: 8:00 a.m. to adjournment.
Place of Meeting: ANA Hotel, 2401 M Street, NW., Washington, DC 20037.
Purpose/Agenda: To review small grant applications in sociology and psychology.
Contact Person: Dr. Paul Lenz, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel Pilot Project Research Grant Program in Neuroscience and Biology.
Date of Meeting: June 11, 1997.
Time of Meeting: 1:00 p.m. to adjournment.
Place of Meeting: Double Tree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.
Purpose/Agenda: To review R03 Grants.
Contact Person: Dr. Louise Hsu, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: May 16, 1997.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 97–13527 Filed 5–21–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meeting of the National Institute of General Medical Sciences:

Committee Name: Biomedical Research & Research Training Committee, Subcommittee-B (BRRT)
Date: June 10, 1997.
Time: 8:30 a.m.—until conclusion.
Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Irene B. Glowinski, Ph.D., Scientific Review Administrator, NIGMS, Office of Scientific Review, 45 Center Drive, Room 1AS–13J, Bethesda, MD 20892–6200, 301–594–2772 or 301–594–3663.
Purpose: To review and evaluate program project applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS])

Dated: May 16, 1997.

LaVeen Ponds,

Acting Committee Management Office, NIH.

[FR Doc. 97–13528 Filed 5–21–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Communication disorders Review Committee.
Date: June 12–13, 1997.
Time: 8 am–5:30 pm, June 12; 8 am–adjournment, June 13.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase MD 20815.
Contact Person: Craig A. Jordan, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892–7180, 301–496–8683.
Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: May 16, 1997.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 97–13530 Filed 5–21–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Institute on Aging Initial Review Group Biology Aging Review Committee (NIA–B).
Dates of Meeting: June 2–3 1997.
Times of Meeting: June 2—7:00 p.m. to recess; June 3—9:00 a.m. to adjournment.
Place of Meeting: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20892.
Purpose/Agenda: To review grant applications.
Contact Person: Dr. James Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20814, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel Mitochondrial Impairment in Alzheimer's Disease (Meeting/Teleconference).
Date of Meeting: June 9, 1997.
Times of Meeting: June 9—4:00 p.m. to adjournment.
Place of Meeting: Gateway Building, 7201 Wisconsin Avenue, Bethesda, Maryland 20892.
Purpose/Agenda: To review a program project.
Contact Person: Dr. Maria Mannarino, Scientific Review Administrators, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of Committee: National Institute on Aging Initial Review Group Clinical Aging Review Committee.
Date of Meeting: June 10, 1997.
Time of Meeting: 8:30 a.m. to adjournment.
Place of Meeting: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.
Purpose/Agenda: To review a variety of grant applications.
Contact Person: Dr. William Kachadorian, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel RFA for Minority Investigator Career Development in the Women's Health Initiative.
Date of Meeting: June 10, 1997.
Time of Meeting: 1:30 to adjournment.
Place of Meeting: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.
Purpose/Agenda: To review proposals for an RFA.
Contact Person: Dr. William Kachadorian, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel Pilot Research Grant Program.
Date of Meeting: June 11, 1997.
Times of Meeting: June 11—1:00 p.m. to adjournment.
Place of Meeting: Double Tree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.
Purpose/Agenda: To review RO3 grant applications.
Contact Person: Dr. Maria Mannarino, Scientific Review Administrators, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: National Institute on Aging Special Emphasis Panel Resource Centers for Minority Aging Research Centers.
Date of Meeting: June 23–25, 1997.
Times of Meeting: June 23—8:00 a.m. to 6:00 p.m.; June 24—8:00 a.m. to 6:00 p.m.; June 25—8:00 a.m. to 6:00 p.m.
Place of Meeting: Comfort Suites, Laurel Lakes, 14402 Laurel Place, Laurel, Maryland 20707.
Purpose/Agenda: To review proposals for an RFA.
Contact Person: Dr. Arthur Schaerdel, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: May 16, 1997.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 97–13531 Filed 5–21–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Initial Review Group (IRG) meetings:

Name of IRG: Population Research Subcommittee.
Date: June 13, 1997.
Place: 6100 Executive Boulevard, 6100 Building—Fifth Floor Confer. Rm., Rockville, MD 20852.
Time: 8:00 a.m.—adjournment.

Name of IRG: Population Research Subcommittee.
Date: June 23–24, 1997.
Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Time: June 23—8:00 a.m.—5:00 p.m.; June 24—8:00 a.m.—adjournment.
Contact Person: Dr. A. T. Gregoire, 6100 Executive Boulevard, 6100 Building—Rm. 5E01, Rockville, MD 20852, Telephone: 301–496–1485.

Name of IRG: Maternal and Child Health Research Subcommittee.
Date: June 17–18, 1997.
Time: June 17—8:00 a.m.—5:00 p.m.; June 18—8:30 a.m.—adjournment.
Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.
Contact Person: Dr. Gopal Bhatnagar, 6100 Executive Boulevard, 6100 Building—Rm. 5E03, Rockville, Maryland 20852, Telephone: 301–496–1696.

Name of IRG: Mental Retardation Research Subcommittee.
Date: June 20, 1997.
Time: 8:00 a.m.—adjournment.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Contact Person: Dr. Norman Chang, 6100 Executive Boulevard, 6100 Building—Rm. 5E03, Rockville, Maryland 20892, Telephone: 301–496–1484.

Name of IRG: Medical Rehabilitation Research Subcommittee.
Date: June 20, 1997.
Time: 8:00 a.m.—adjournment.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Contact Person: Anne Krey, 6100 Executive Boulevard, 6100 Building—Rm. 5E03, Rockville, Maryland 20892, Telephone: 301–496–1696.
Purpose/Agenda: To review and evaluate research grant applications.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: May 16, 1997.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 97–13532 Filed 5–21–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: May 28, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4150, Telephone Conference.
Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435–1719.

Name of SEP: Clinical Sciences.
Date: June 4–5, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, Bethesda, Maryland.
Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.
Date: June 13, 1997.
Time: 9:30 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Dr. Sandy Warren, Scientific Review Administrator, 6701 Rockledge Drive, Room 5134, Bethesda, Maryland 20892, (301) 435–1019.

Name of SEP: Clinical Sciences.
Date: June 19–20, 1997.
Time: 8:00 a.m.
Place: The Georgetown Inn, Washington, DC.
Contact Person: Dr. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Multidisciplinary Sciences.
Date: June 29–30, 1997.
Time: 7:30 p.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

Name of SEP: Biological and Physiological Sciences.
Date: June 30, 1997.
Time: 8:00 a.m.
Place: Sheraton, Reston, Virginia.
Contact Person: Dr. Gerald Greenhouse, Scientific Review Administrator, 6701 Rockledge Drive, Room 5140, Bethesda, Maryland 20892, (301) 435–1023.

Name of SEP: Biological and Physiological Sciences.
Date: July 1, 1997.
Time: 5:30 p.m.
Place: Holiday Inn-Georgetown, Washington, DC.
Contact Person: Dr. Sooja Kim, Scientific Review Administrator, 6701 Rockledge Drive, Room 4120, Bethesda, Maryland 20892, (301) 435–1780.

Name of SEP: Biological and Physiological Sciences.
Date: July 7–8, 1997.
Time: 8:30 a.m.
Place: Ramada Inn, Rockville, Maryland.
Contact Person: Dr. Syed Amir, Scientific Review Administrator, 6701 Rockledge Drive, Room 6168, Bethesda, Maryland 20892, (301) 435–1043.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Biological and Physiological Sciences.
Date: June 24, 1997.
Time: 1:30 p.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Sooja Kim, Scientific Review Administrator, 6701 Rockledge Drive, Room 4120, Bethesda, Maryland 20892, (301) 435–1780.

Name of SEP: Chemistry and Related Sciences.
Date: July 14, 1997.
Time: 8:30 a.m.
Place: Marriott Dulles Airport Hotel, Chantilly, Virginia.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 16, 1997.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 97–13529 Filed 5–21–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Environmental Impact Statement for the Proposed Establishment of Waccamaw National Wildlife Refuge, Georgetown, Horry, and Marion Counties, South Carolina

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement, proposed establishment of Waccamaw National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, has completed a Final Environmental Impact Statement (EIS) on a proposal to establish a new national wildlife refuge in Georgetown, Horry, and Marion Counties, South Carolina. The Final EIS addresses the anticipated biological, environmental, and socioeconomic impacts of establishing the proposed refuge. It presents five alternatives for the protection and management of the fish and wildlife resources of the proposed refuge area, including a ''No Action'' alternative. The other four alternatives address the establishment of a refuge involving different boundary sizes and locations. The Fish and Wildlife Service's preferred alternative is to acquire up to 49,800 acres for the establishment of the refuge.

ADDRESSES: Copies of the Final Environmental Impact Statement are now available for distribution to the public. Requests for Copies of the document should be addressed to Mr. Charles R. Danner, Team Leader, Planning and Support Team, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345, or by telephone at 800/419–9582.

SUPPLEMENTARY INFORMATION: The propose refuge area is located between the Intracoastal Waterway and U.S. Highway 701 north of Winyah Bay in coastal South Carolina. The purpose of the proposed refuge is to (1) Protect and manage diverse the habitat components of an important coastal river ecosystem for the benefit of endangered and threatened species, migratory birds, anadromous fish, and forest wildlife, including a wide array of plants and animals associated with bottom land hardwood habitats; and (2) provide compatible wildlife-dependent recreational activities including hunting, fishing, wildlife observation, photography, and environmental education and interpretation for the

enjoyment of present and future generations.

Dated: May 15, 1997.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 97–13555 Filed 5–21–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NM–930–1310–01); (NMNM 13277)]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 13277 for lands in Lea County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from March 1, 1996, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $20.00 per acre or fraction thereof and 22⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in sections 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective March 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

For further information contact: Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

Dated: May 15, 1997.

Lourdes B. Ortiz,

Land Law Examiner.

[FR Doc. 97–13488 Filed 5–21–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–932–1310–01; OKNM 89758]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease OKNM 89758, Roger Mills County, Oklahoma, was timely filed and was accompanied by all required rentals and royalties accruing from November 1, 1996, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, and 16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective November 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

For further information contact: Angela Trujillo, BLM, New Mexico State Office, (505) 438–7592.

Dated: May 14, 1997.

Angela Trujillo,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 97–13495 Filed 5–21–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1150–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. May 12, 1997.

The plat representing the dependent resurvey of a portion of the South boundary, T. 7 N., R. 3 W. and of portions of the West boundary, of the subdivisional lines, and the subdivision of certain sections, and the survey of lot 10 in section 5, T. 6 N., R. 3 W., Boise Meridian, Idaho, Group 938, was accepted, May 12, 1997.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: May 12, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–13388 Filed 5–21–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–1430–01; FL–ES–048122]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 54.33 acres of public land in Palm Beach County to protect special status species, including endangered species, as well as sensitive habitats on the Jupiter Inlet tract. This notice closes the land for up to 2 years from surface entry and mining. The land is within an incorporated city and remains closed to mineral leasing.

DATES: Comments and requests for a public meeting must be received by August 20, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Jackson District Office, BLM, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206.

FOR FURTHER INFORMATION CONTACT: Mary Weaver, Jackson District Office, 601–977–5400.

SUPPLEMENTARY INFORMATION: On February 7, 1997, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Tallahassee Meridian

T. 40 S., R. 43 E.,
Sec. 31, lot 15.

The area described contains 54.33 acres in Palm Beach County.

The purpose of the proposed withdrawal is to protect special status species including endangered species, as well as sensitive habitats within the Jupiter Inlet Area of Critical Environmental Concern. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the District Manager

of the Bureau of Land Management, Jackson District Office.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Jackson District Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR 2300. For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period will include leases, rights-of-way, permits.

Carson W. Culp, Jr.,

State Director.

[FR Doc. 97–13496 Filed 5–21–97; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Wisconsin in the Possession of the Neville Public Museum of Brown County, Green Bay, WI

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects from Wisconsin in the possession of the Neville Public Museum of Brown County, Green Bay, WI.

A detailed assessment of the human remains was made by Neville Public Museum professional staff in consultation with representatives of the Ho-Chunk Nation of Wisconsin, the Iowa Tribe of Kansas, the Iowa Tribe of Oklahoma, and the Winnebago Tribe of Nebraska.

In 1940, human remains representing seven individuals were recovered from Point Sable, Brown County, WI during a utility work project. These human remains and associated funerary objects were donated to the Neville Public Museum by H.L. Ward, Payson Williams, and Mrs. E.O. Paulson the same year. No known individuals were identified. The 487 associated funerary objects include ceramics, bark and wood fragments, turtle carapace fragments, mammal, fish, and bird bones, a turtle net-spreader, shell, brass and/or copper beads, a gun flint, brass or copper bracelets, shell gorget fragment, and an antler flaker.

These individual have been identified as Native American based on the associated funerary objects and apparent age of the burials. The presence of Oneota-style vessels and Allamakee Trailed sherds, as well as a gun flint indicate a late precontact to early historic period date of internment for these individuals. The Ioway peoples have been culturally affiliated with the Oneota based on continuties of material culture, and historical documents. Historical documents, archeological evidence, and ethnohistoric evidence indicate a continual Ho-Chunk (Winnebago) presence on the east side of Green Bay from precontact period into the historic period. Oral history evidence presented by representatives of the Ho-Chunk Nation of Wisconsin, the Iowa Tribe of Kansas, the Iowa Tribe of Oklahoma, and the Winnebago Tribe of Nebraska further indicate Oneota affilation in this area of Brown County with these present day tribes.

Based on the above mentioned information, officials of the Neville Public Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of seven individuals of Native American ancestry. Officials of the Neville Public Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 487 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Neville Public Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Ho-Chunk Nation of Wisconsin, the Iowa Tribe of Kansas, the Iowa Tribe of Oklahoma, and the Winnebago Tribe of Nebraska.

This notice has been sent to officials of the Ho-Chunk Nation of Wisconsin, the Iowa Tribe of Kansas, the Iowa Tribe of Oklahoma, and the Winnebago Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Ann Koski, Director, Neville Public Museum of Brown County, 210 Museum Place, Green Bay, WI 54303; telephone: (414) 448–4460, before June 23, 1997. Repatriation of the human remains and associated funerary objects to the Iowa Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: May 16, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–13462 Filed 5–21–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains From Lamoine, ME, in the Possession of Robert S. Peabody Museum of Archaeology, Andover, ME

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains from Lamoine, ME, in the possession of Robert S. Peabody Museum of Archaeology, Andover, ME.

A detailed assessment of the human remains was made by Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Aroostook Band of Micmac Indians, the Houlton Band of Maliseet Indians, the Passamaquoddy Indian Tribe, and the Penobscot Indian Nation.

In 1913, human remains representing two individuals were recovered from the Hodgkins' Point Shellheap in Lamoine, ME by Warren King Moorehead during excavations by the Robert S. Peabody Museum. No known individuals were identified. No associated funerary objects are present.

Morphological evidence indicates these individuals are Native American based on dentition. Hodgkins' Point site has been identified as an Etchemin occupation site used between 900—1500 AD based on material culture present at the site. Based on archeological and historical evidence

and continuities of material culture, the Etchemin are considered the ancestral culture of the present-day Passamaquoddy Indian Tribe and the Penobscot Indian Nation.

Based on the above mentioned information, officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Passamaquoddy Indian Tribe and the Penobscot Indian Nation.

This notice has been sent to officials of the Passamaquoddy Indian Tribe and the Penobscot Indian Nation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact James W. Bradley, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01281; telephone: (508) 749–4490, before June 23, 1997. Repatriation of the human remains to the Passamaquoddy Indian Tribe and the Penobscot Indian Nation may begin after that date if no additional claimants come forward.

Dated: May 16, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–13463 Filed 5–21–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree; Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR § 50.7, notice is hereby given that a proposed Final Consent Decree in *United States* v. *Stewart I. Cottinghan*, Civil No. 4:97–1075–22 (D.S.C.), was lodged with the United States District Court for the District of South Carolina on April 18, 1997. The proposed Consent Decree concerns alleged violations of sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. §§ 1311(A) and 1344, resulting from the unauthorized discharge of fill material into approximately 0.8 acre of forested wetlands adjacent to the Little Pee Dee River in Dillon, South Carolina. The fill material, consisting of concrete blocks, bricks, building materials, and wood chips, was deposited into the wetlands in conjunction with the construction of a roadway through the property.

The proposed Final Consent Decree would provide for the payment of a $2,000 civil penalty and would permanently enjoin the Defendant from performing future work in wetlands without the required permit(s) from the U.S. Army Corps of Engineers. The unauthorized fill material was satisfactorily removed from the wetlands, with the exception of a portion of the roadway which will remain in place under authority of Nationwide Permit No. 32.

The U.S. Department of Justice will receive written comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to R. Emery Clark, Assisted United States Attorney, District of South Carolina, 1441 Main Street, Suite 500, Columbia, S.C. 29201 and should refer to *United States* v. *Stewart I. Cottingham*, Civil No. 4:97–1075–22 (D.S.C.).

The proposed Final Consent Decree may be examined at the Clerk's Office, United States District Court for the District of South Carolina, Florence Division, John L. McMillan Federal Building, 401 W. Evans Street, Florence, South Carolina 29503.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 97–13392 Filed 5–21–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Related to the Fred Ramsey Superfund Site Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Notice is hereby given that two proposed consent decrees were lodged in *United States* v. *Fred Ramsey et al.*, Civil Action No. 7:96–CV–14 (HL) (M.D. Ga.) on May 7, 1997, with the United States District Court for the Middle District of Georgia. The consent decrees settle claims against separate defendants brought under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. § 9607(a), for response costs incurred by the United States at the Fred Ramsey Tank Superfund Site (''Site'') in Valdosta, Georgia. These costs were incurred when EPA removed three abandoned aboveground storage tanks, one abandoned tanker-trailer, and contaminated soil from the Site. These tanks were formerly used by Ramsey Chemical Co. as part of its solvent recycling business and were moved to the Site by Mr. Ramsey. The United States has incurred approximately $335,000 in response costs (including interest).

Under one of the proposed consent decrees, Mr. Ramsey is agreeing to pay $112,000 to the United States in reimbursement of response costs associated with the Site. In addition, Mr. Ramsey is agreeing to pay $213,000 in civil penalties under sections 104(e) and 106(b) of CERCLA, 42 U.S.C. §§ 9604(e) and 9606(b), and section 3008(a) of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. § 6928(a).

Under the second proposed consent decree, thirteen former customers of Ramsey Chemical Co. (referred to as the ''Generator Group'') are collectively agreeing to pay $223,000 to the United States in reimbursement of response costs associated with the Fred Ramsey Tank Superfund Site. The parties to this decree are: General Motors Corporation; Minnesota Mining and Manufacturing Co.; Rexham Inc.; Guardsman Products, Inc.; BASF Corporation; Kalama Chemical Inc., Lobeco Products, Inc.; R.J. Reynolds Tobacco Company; Grow Group, Inc.; ITT Automotive, Inc.; Miller Brewing Company; The Alpha Corporation of Tennessee; and, DeSoto, Inc.

The Department of Justice will receive comments relating to the proposed consent decrees for a period of thirty days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C., 20530. All comments should refer to the name of the case and to DOJ Ref. No. 90–11–3–1600.

The proposed consent decrees may be examined at the Office of the United States Attorney, Middle District of Georgia, 433 Cherry Street, 4th Floor, Galleria Building, Macon, Georgia, 31202; the Region 4 Office of the Environmental Protection Agency, 61 Forsythe Street, S.E., Atlanta, Georgia 30303; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C., 20005, (202) 624–0892. Copies of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C., 20005. In requesting a copy please refer to the referenced

case and enclose a check in the amount of $3.50 for the consent decree with Fred Ramsey, or $6.50 for the consent decree with the Generator Group (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–13473 Filed 5–21–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in Clean Air Act Civil Enforcement Action

In accordance with the Departmental Policy, 28 CFR § 50.7, notice is hereby given that a Consent Decree in *United States* v. *Westinghouse Electric Corp., Waste Resource Energy, Inc., and York Resource Energy, Inc.,* Civil Action No. 97–3287, was lodged with the United States District Court for the Eastern District of Pennsylvania on May 8, 1997.

The United States filed a complaint on May 8, 1997, against Westinghouse Electric Corp., Waste Resource Energy, Inc., and York Resource Energy, Inc. (''defendants''), alleging violations of the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, occurring at defendants' municipal solid waste incinerators located in Chester and York, Pennsylvania. The complaint alleges that the defendants violated the Clean Air Act by emitting air pollutants, including hydrochloric acid, carbon monoxide, and sulphur dioxide in amounts in excess of the limits established in the defendants' Prevention of Significant Deterioration (''PSD'') permits, which were issued to defendants by the Pennsylvania Department of Environmental Protection (''PADEP''). The Commonwealth of Pennsylvania, on behalf of PADEP, filed a complaint in intervention in the action brought by the United States.

The proposed Consent Decree resolves the defendants' liability to the United States and to the Commonwealth of Pennsylvania for the violations alleged in the complaints. The Decree requires the defendants to: (1) comply with the terms of their PSD permits; (2) operate and maintain their incinerators in compliance with certain terms of the Decree; (3) perform certain supplemental environmental projects valued at $300,000; and (4) pay a civil penalty of $50,000 to the United States and $50,000 to the Commonwealth of Pennsylvania.

The Department of Justice will accept written comments on the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin station, Washington, DC 20044 and refer to *United States* v. *Westinghouse Electric Corp., Waste Resource Energy, Inc., and York Resource Energy, Inc.,* DOJ Nos. 90–5–2–1–1980 and 90–5–2–1–1980A.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Twelfth Floor, Philadelphia, Pennsylvania; Region III Office of EPA, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. When requesting a copy of the proposed Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''Consent Decree Library'' in the amount of $14.50, and please reference DOJ Nos. 90–5–2–1–1980 and 90–5–2–1–1980A.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 97–13472 Filed 5–21–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on April 28, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Advanced Lead-Acid Battery Consortium (''ALABC''), a program of International Lead Zinc Research Organization, Inc., filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Sacramento Municipal Utility District, Sacramento, Municipal Utility District, Sacramento, CA; Virginia Power Company, Richmond, VA; Acumuladores Autosil, Lisbon, Portugal; and Wavedriver, Ld., Hertfordshire, United Kingdom have made commitments to the Consortium.

No other changes have been made in either the membership or planned activity of the Consortium. Membership in the Consortium remains open and ALABC intends to file additional written notification disclosing any future changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992 (57 FR 33522). The last notification was filed with the Department on January 29, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 20, 1997 (62 FR 13394).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 97–13391 Filed 5–21–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; The ATM Forum

Notice is hereby given that, on April 28, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the ATM Forum (''Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following organizations have joined the Forum: ASCII Laboratories, Inc., Tokyo, JAPAN; Linmor Technologies, Inc., Nepean, Ontario, CANADA; Scientific Research Corp., Atlanta, GA; TTK Consulting, Petaling Jaya Selangor, MALAYSIA; Visual Networks, Inc., Rockville, MD; and Xedia Corp., Littleton, MA. The following organizations have withdrawn their membership with the Forum: ACT Networks Inc.; Bear-Stearns and Co.; Bolt Beranek & Newman Corporation; Cablelabs Inc.; California Eastern Labs Corp.; CTS Corp.; Cypress Semiconductor Corp.; Data Communications Technology; Digi International Inc.; Digicom Systems Inc.;

EXAR Corp; Graphics Communication Laboratories; Ipsilon Networks Inc.; IT Concepts PTE Ltd.; Lawrence Berkeley Labs; Molex Inc.; Network Peripherals Inc.; Nuera Communications Inc.; Packard-Hughes Interconnect; S–COM AG; Sierra Research and Technology Inc.; Stellar One Corp.; Telstra Corp.; UNI Inc.; and Vixel Corp. Additionally, the following Forum members have been involved in acquisitions: Ascend Communications Inc., acquired Whitetree Network Technologies Inc.; Cadia Networks Inc., acquired by FORE systems, Inc.; Fluke Corp., acquired DeskNet Systems, Inc.; and U.S. Robotics Corp., acquired Scorpio Communications Ltd. The following members have changed their names: Brooktree Corp., to Rockwell Semiconductor Systems, Inc.; GIE COFiRA to GIE CEGETEL; and MFS Communications to WorldCom, Inc. The following have changed their membership from auditing members to principal members: Pairgain Technologies, Inc.; Switched Networks Technologies; and Vitesse Semiconductor Corp. The following have changed their membership from principal members to auditing members: Adaptec Inc.; Advanced Micro Devices Inc.; Auspex Systems Inc.; IAE Corp.; Incite; Information Comm Inst Singapore; Level One Communications Inc.; Scope Communications Inc.; Silicon Graphics Inc.; Silicom Manufacturing Technology Inc.; Southern New England Telephone Corp.; Tampere University of Technology; and Unisys Corp.

No changes have been made in the planning activities of the Forum. Membership remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On April 19, 1993, the Forum filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on June 2, 1993 (58 FR 31415). The last notification was filed on January 28, 1997 and a notice was published in the **Federal Register** on March 20, 1997 (62 FR 13394).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–13543 Filed 5–21–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Michigan Materials and Processing Institute

Notice is hereby given that, on April 15, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Michigan Materials and Processing Institute (''MMPI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following companies were recently accepted as a Class A Shareholders in MMPI: Strategic Materials, Inc., Houston, TX; The Technology Partnership, Inc., Grosse Ile, MI; and United Technologies Corporation, East Hartford, CT. Class A Shareholder, Akemi, Inc., is now Axson North America, Inc., Eaton Rapids, MI. Haworth, Inc., Holland, MI, is no longer a Class A Shareholder.

No other changes have been made in either the membership or the planned activity of the group research project. Membership in this group research project remains open, and MMPI intends to file additional written notification disclosing all changes in membership.

On August 7, 1990, MMPI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990 (55 FR 36710). The last notification was filed with the Department on August 8, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 5, 1996 (61 FR 46826).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 97–13393 Filed 5–21–97; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–93]

Entela, Inc.; Notice of Final Decision

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of expansion of recognition as a Nationally Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the Entela, Inc. application for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Entela, Inc. (ENT) previously made application pursuant to 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory (see 59 FR 10180, 3/3/94), and was so recognized (see 59 FR 37997, 7/26/94). ENT applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL) for equipment or materials, programs and procedures, and inclusion of its Taiwan facility, pursuant to 29 CFR 1910.7, which was published in the **Federal Register** (62 FR 8041, 2/21/97). No comments were received concerning this request for expansion.

Notice is hereby given that ENT's recognition as a Nationally Recognized Testing Laboratory has been expanded to include the 57 test standards (equipment and materials) and the programs and procedures listed below, and also Entela's Taiwan facility with specific limitations.

Copies of all pertinent documents (Docket No. NRTL–2–93) are available for inspection and duplication at the Docket Office, Room N–2634, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

The addresses of the laboratories covered by this application are: *Entela, Inc.*, 3033 Madison, S.E., Grand Rapids, Michigan 49548 and *Entela Taiwan Laboratories*, 3F No. 260 262 Wen, Lin North Road, Pei Tou, Taipei, Taiwan.

Final Decision and Order

Based upon the facts found in the complete application file, including details of necessary test equipment, procedures, and special apparatus or facilities needed; adequacy of the staff, the application, amendments, and documentation submitted by the applicant; the OSHA staff finding including the original and the November 26, 1996 On-Site Review Reports of the Grand Rapids facility, and the ''Survey Report'' of the Taiwan facility, dated February 24, 1994; and the evaluation of the current requests, OSHA finds that Entela, Inc., has met the requirements of 29 CFR 1910.7 for expansion of its present recognition to test and clarify certain equipment or materials, to utilize specific programs and procedures, and to utilize the Entela Taiwan Laboratories facility.

Pursuant to the authority in 29 CFR 1910.7, ENT's recognitions is hereby expanded to include (1) The 57 additional test standards (product categories), (2) the eight programs and procedures cited below, and (3) Entela Taiwan Laboratories, all subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR part 1910, require testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following 57 additional test standards for the testing and certification of equipment or materials included within the scope of these standards.

Expansion of Recognition—Test Standards

ENT has stated that these standards are used to test equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

ANSI/UL 22—Amusement and Gaming Machines
UL 122—Photographic Equipment
ANSI/UL 244A—Solid State Controls for Appliances
ANSI/UL 353—Limit Controls
UL 355—Cord Reels
UL 429—Electrically Operated Valves
ANSI/UL 467—Grounding and Bonding Equipment
ANSI/UL 499—Electric Heating Appliances
ANSI/UL 696—Electric Toys
UL 745–1—Portable Electric Tools
UL 745–2–1—Drills
UL 745–2–2—Screwdrivers and Impact Wrenches
UL 745–2–3—Grinders, Polishers and Disk-type Sanders
UL 745–2–4—Sanders
UL 745–2–5—Circular Saws and Circular Knives
UL 745–2–6—Hammers
UL 745–2–8—Shears and Nibblers
UL 745–2–9—Tappers
UL 745–2–11—Reciprocating Saws
UL 745–2–12—Concrete Vibrators
UL 745–2–14—Planers
UL 745–2–17—Routers and Trimmers
UL 745–2–30—Staplers
UL 745–2–31—Diamond Core Drills
UL 745–2–32—Magnetic Drill Press
UL 745–2–33—Portable Bandsaws
UL 745–2–34—Strapping Tools
UL 745–2–35—Drain Cleaners
UL 745–2–36—Hand Motor Tools
UL 745–2–37—Plate Joiners
UL 749—Household Dishwashers
UL 763—Motor Operated Commercial Food Preparing Machines
ANSI/UL 826—Household Electric Clocks
ANSI/UL 859—Household Electric Personal Grooming Appliances
ANSI/UL 917—Clock Operated Switches
ANSI/UL 921—Commercial Electric Dishwashers
UL 982—Motor Operated Household Food Preparing Machines
UL 987—Stationary and Fixed Electric Tools
UL 1018—Electric Aquarium Equipment
UL 1028—Hair Clipping and Shaving Appliances
ANSI/UL 1083—Household Electric Skillets and Frying Type Appliances
UL 1086—Household Trash Compactors
UL 1206—Electric Commercial Clothes Washing Machines
ANSI/UL 1262—Laboratory Equipment
ANSI/UL 1310—Class 2 Power Units
ANSI/UL 1447—Electric Lawn Mowers
ANSI/UL 1448—Electric Hedge Trimmers
ANSI/UL 1555—Electric Coin Operated Clothes Washing Equipment
ANSI/UL 1556—Electric Coin Operated Clothes Drying Equipment
UL 1574—Track Lighting Systems
ANSI/UL 1585—Class 2 and Class 3 Transformers
ANSI/UL 1594—Sewing and Cutting Machines
ANSI/UL 1727—Commercial Electric Personal Grooming Appliances
UL 1786—Nightlights
UL 1838—Low Voltage Landscape Lighting Systems
UL 3101–1—Electric Equipment for Laboratory Use, Part 1, General
UL 3111–1—Electric Controls for Household and Similar Use, Part 1, General

Expansion of Recognition—Programs and Procedures

1. Acceptance of testing data from independent organizations, other than NRTLs.
2. Acceptance of product evaluations from independent organizations, other than NRTLs.
3. Acceptance of witnessed testing data.
4. Acceptance of testing data from non-independent organizations.
5. Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).
6. Acceptance of product certification following minor modifications by the client.
7. Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.
8. Acceptance of services other than testing or evaluation performed by subcontractors or agents.

Expansion of Recognition—Facilities

The following limitations will apply to the recognition of the Taiwan facility:

a. The Taiwan facility shall be limited to carrying out minor mechanical and electrical testing of instruments and small appliances.

b. Performance of inspections shall be limited to Entela personnel.

Entela, Inc. must also abide by the following conditions of the expansion of its recognition, in addition to those already required by 29 CFR 1910.7:

The Occupational Safety and Health Administration shall be allowed access to ENT's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary,

If ENT has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organizations of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ENT shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ENT agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ENT shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

ENT will continue to meet the requirements for recognition in all areas where it has been recognized; and

ENT will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE: This renewal and recognition will become effective on May 22, 1997 and will be valid until July 26, 1999, (a period of five years from the date of the original recognition), unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, D.C. this 15th day of May, 1997.

Greg Watchman,

Acting Assistant Secretary.

[FR Doc. 97–13416 Filed 5–21–97; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL INSTITUTE FOR LITERACY

Advisory Board Meeting

AGENCY: National Institute for Literacy Advisory Board, National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Advisory Board). This notice also describes the function of the Advisory Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATES AND TIME: June 12, 1997, 10:00 a.m. to 5:00 p.m., and June 13, 1997, 9:00 a.m. to 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Sara Pendleton, National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006. Telephone (202) 632–1507.

SUPPLEMENTARY INFORMATION: The Advisory Board is established under Section 384 of the Adult Education Act, as amended by Title I of P.L. 102–73, the National Literacy Act of 1991. The Advisory Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Advisory Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Advisory Board performs the following functions (a) makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In addition, the Institute consults with the Advisory Board on the award of fellowships. The Advisory Board will meet at the Airlie Foundation (Conference Center) located at 6809 Airlie Road, Warrenton, Virginia 20187, on June 12, 1997 from 10:00 a.m. to 5:00 p.m., and June 13, 1997 from 9:00 a.m. to 3:00 p.m., and is open to the public. The agenda will include the following: (1) future Institute activities, (2) current Institute program activities, including the Public Awareness Campaign, and (3) other general administrative and/or budget issues. Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006 from 8:30 a.m. to 5:00 p.m.

Dated: May 16, 1997.

Andrew J. Hartman,

Director, National Institute for Literacy.

[FR Doc. 97–13406 Filed 5–21–97; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

Revised Contents of the Monthly Operating Report; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter 97–02 to notify all holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, that the NRC is requesting the submittal of less information in the monthly operating report. The generic letter requires no specific action or written response. Conformance with the guidance provided in the generic letter is voluntary. Licensees who choose not to implement this guidance may continue to submit monthly operating reports as they have in the past.

The generic letter is a ''rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C., Chapter 8). The staff has received confirmation from the Office of Management and Budget that the generic letter is a non-major rule.

This generic letter is available in the NRC Public Document Room under accession number 9705020260.

DATES: The generic letter was issued on May 15, 1997.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: James W. Shapaker at (301) 415–1151.

SUPPLEMENTARY INFORMATION: The information gathering needs of the NRC have been the subject of several staff reviews. These reviews have focussed on identifying duplicative reporting, determining whether some reports could be reduced in scope or eliminated, and determining whether the frequency of reporting could be reduced. In this regard, the NRC staff has concluded that the scope of the information requested in the monthly operating report, which is called for in the Technical Specifications of nuclear power reactors, may be reduced.

Dated at Rockville, Maryland, this 15th day of May 1997.

For the Nuclear Regulatory Commission.

Marylee M. Slosson,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–13274 Filed 5–21–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

May 1, 1997.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of May 1, 1997, of ten rescission proposals and seven deferrals contained in three special messages for FY 1997. These messages were transmitted to Congress

on December 4, 1996, and on February 10 and March 19, 1997.

Rescissions (Attachments A and C)

As of May 1, 1997, ten rescission proposals totaling $407 million had been transmitted to the Congress. Attachment C shows the status of the FY 1997 rescission proposals.

Deferrals (Attachments B and D)

As of May 1, 1997, $2,604 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1997.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report is printed in the editions of the **Federal Register** cited below:

61 FR 66172, Monday, December 16, 1996

62 FR 8045, Friday, February 21, 1997

62 FR 14478, Wednesday, March 26, 1997

Franklin D. Raines,

Director.

BILLING CODE 3110–01–P

ATTACHMENT A
STATUS OF FY 1997 RESCISSIONS
(in millions of dollars)

	Budgetary Resources
Rescissions proposed by the President	407.1
Rejected by the Congress	---
Amounts rescinded	---
Currently before the Congress	407.1

ATTACHMENT B
STATUS OF FY 1997 DEFERRALS
(in millions of dollars)

	Budgetary Resources
Deferrals proposed by the President	3,544.3
Routine Executive releases through May 1, 1997	-940.5
(OMB/Agency releases of $940.5 million.)	
Overturned by the Congress	---
Currently before the Congress	2,603.8

ATTACHMENT C

Status of FY 1997 Rescission Proposals - As of May 1, 1997
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Foreign Agricultural Service								
P.L. 480 grants -- Titles I (OFD), II, and III.....	R97-1		3,500	2-10-97	3,500	4-30-97		
P.L. 480 program account.....	R97-2		46,500	2-10-97	46,500	4-30-97		
DEPARTMENT OF DEFENSE - MILITARY								
Operation and Maintenance								
Operation and maintenance, Defense-wide.....	R97-4		10,000	2-10-97	10,000	4-28-97		
Procurement								
National Guard and Reserve equipment.....	R97-5		62,000	2-10-97	62,000	4-28-97		
DEPARTMENT OF ENERGY								
Energy Programs								
Strategic petroleum reserve.....	R97-6		11,000	2-10-97	11,000	4-28-97		
Clean coal technology.....	R97-11	10,000		3-19-97				
Power Marketing Administrations								
Construction, rehabilitation, operation and maintenance, Western Area Power Administration.....	R97-7		2,111	2-10-97	2,111	4-28-97		

ATTACHMENT C

Status of FY 1997 Rescission Proposals - As of May 1, 1997
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs								
Annual contributions for assisted housing.....	R97-8		250,000 1/	2-10-97	1/			
DEPARTMENT OF JUSTICE								
General Administration								
Working capital fund.....	R97-9		6,400	2-10-97	*			
GENERAL SERVICES ADMINISTRATION								
General Activities								
Expenses, Presidential transition.....	R97-10		5,600 2/	2-10-97	2/			
TOTAL RESCISSIONS.....		**10,000**	**397,111**		**135,111**		**0**	

1/ Funds are currently being withheld pursuant to section 218 of P.L. 104-208.
2/ Funds are not available for obligation pursuant to 2 USC 102 (note).
* Funds were never withheld from obligation.

ATTACHMENT D
Status of FY 1997 Deferrals - As of May 1, 1997
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 5-1-97
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund and International Fund for Ireland	D97-1	1,258,292		12-4-96	719,161				539,131
Foreign military financing program	D97-2	1,412,375		12-4-96	97,252				1,315,123
Foreign military financing loan program	D97-3	60,000		12-4-96					60,000
Foreign military financing direct loan financing account	D97-4	540,000		12-4-96					540,000
Agency for International Development									
International disaster assistance, Executive	D97-5	147,800		12-4-96	71,090				76,710
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D97-6	118,486		12-4-96	53,000				65,486
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D97-7	7,365		12-4-96					
	D97-7A		4	2-10-97					7,369
TOTAL, DEFERRALS		**3,544,318**	**4**		**940,503**			**0**	**2,603,819**

[FR Doc. 97–13414 Filed 5–21–97; 8:45 am]
BILLING CODE 3110–01–C

POSTAL SERVICE

Request for Further Comments on Development of Strategic Plan for U.S. Postal Service, Pursuant to the Government Performance and Results Act of 1993; and Correction

AGENCY: Postal Service.

ACTION: Request for further comments and correction.

SUMMARY: This document clarifies the Postal Service's Request for Comments, published in the **Federal Register** on April 2, 1997, and requests further comments. The April 2, 1997, notice asked for public comments on the development of the Postal Service Strategic Plan for the years 1998–2002, pursuant to the Government Performance and Results Act of 1993. In addition to clarifying that Request for Comments, this document also adds text that was inadvertently omitted from that publication. The comment period is extended by two weeks.

DATES: Comments must be received by June 15, 1997.

ADDRESSES: Written comments should be directed to Robert A.F. Reisner, Vice President, Strategic Planning, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1520.

FOR FURTHER INFORMATION CONTACT: Jon L. Cook, (202) 268–4099.

SUPPLEMENTARY INFORMATION: On April 2, 1997, the Postal Service published a **Federal Register** notice asking for public comment as part of the effort to develop a Five-Year Strategic Plan under the Government Performance and Results Act of 1993 (62 FR 15740–15741). Since that time, the Postal Service has received comments from several parties and has been actively consulting with the Congress and with key stakeholders.

Clarification Concerning Scope of Comments

One comment concerns the extent to which the April 2, 1997, Request for Comments could have been interpreted as constraining the scope of comments that are being sought. In fact, the Postal Service seeks comments on *any* matters that may be relevant to the development of a Five-Year Strategic Plan. Specifically, the Postal Service has asked key stakeholders:

1. Is universal postal service at uniform rates still an essential service to the public?
2. What is the best way to balance the dual role of the Postal Service as a public service provider and a business-like enterprise?
3. When do consumer and public benefits warrant that a public agency provide services that might be offered by private enterprise?
4. How should public services and private interest be balanced in providing existing and enhanced postal services?

The Postal Service would be interested in receiving comments on these issues or any other matters related to the development of its Five-Year Strategic Plan.

Erratum

In addition, the April 2, 1997, notice omitted three words in a paragraph describing one of the Postal Service goals as a part of the *CustomerPerfect!* Process. This publication corrects the omission of those three words from this goal statement. The current wording of the *CustomerPerfect!* customer goal should read:

(1) Improve customer satisfaction by offering superior customer value in each market and customer segment *that we target;* (Italics reflect omitted language, now added.)

Because of this clarification and correction, the Postal Service extends the deadline for providing comments until June 15, 1997.

Accordingly, the Request for Comments on April 2, 1997, which was the subject of FR Doc. 97–8270, is corrected as set forth below.

In the Postal Service publication of Wednesday, April 2, 1997, on p. 15741, in the second column, goal number 1 is corrected to read as follows:

''(1) Improve customer satisfaction by offering superior customer value in each market and customer segment that we target;''.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–13421 Filed 5–21–97; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Sunshine Act Meeting

TIMES AND DATES: 1:30 p.m., Monday, June 2, 1997; 8:30 a.m., Tuesday, June 3, 1997.

PLACE: San Juan, Puerto Rico, at the El San Juan Hotel, Avenida Isla Verde, in Ballroom C.

STATUS: June 2 (Closed); June 3 (Open).

MATTERS TO BE CONSIDERED:

Monday, June 2—1:30 p.m. (Closed)

1. Status Report on the Tray Management System.
2. Consideration of Postal Rate Commission Opinion and Recommended Decision in Docket No. MC96–2, Classroom Mail Rates.
3. Consideration of a Filing with the Postal Rate Commission for a Provisional Packaging Service.
4. Rate Case Planning Process (Part 3 of 3).
5. Status Report on the Five-Year Strategic Plan

Tuesday, June 3—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, May 5–6, 1997.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Consideration of Amendments to BOG Bylaws.
4. Consideration of the Office of Inspector General Semiannual Report to Congress.
5. Briefing on Revenue Initiatives.
6. Report on the Caribbean District.
7. Tentative Agenda for the June 30-July 1, 1997, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97–13689 Filed 5–20–97; 3:03 pm]

BILLING CODE 7710–12–M

PRESIDENT'S COMMISSION ON CRITICAL INFRASTRUCTURE PROTECTION

Public Meeting

ACTION: Boston PCCIP Public Meeting.

TIME AND DATE: 10:00 a.m.–1:00 p.m., Friday, June 6, 1997.

PLACE: City Hall, City Council Chambers, 1 City Hall Plaza, Boston MA 02201.

MATTERS TO BE CONSIDERED: Advice or comments of any concerned citizen, group or activity on assuring America's critical infrastructures.

Note: A sign-language interpreter will be available for the hearing-impaired.

CONTACT PERSON FOR MORE INFORMATION: Nelson McCouch, Public Affairs Director, (703) 696–9395, nelson.mccouch@pccip.gov.

Jim Kurtz,

Executive Secretariat, President's Commission on Critical Infrastructure Protection.

[FR Doc. 97–13452 Filed 5–21–97; 8:45 am]

BILLING CODE 3110–$$–P

PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES

Meeting

AGENCY: Presidential Advisory Committee on Gulf War Veterans' Illnesses.

ACTION: Notice of open meeting.

SUMMARY: This notice is hereby given to announce an open meeting of a panel of the Presidential Advisory Committee on Gulf War Veterans' Illnesses. The panel will discuss several issues relevant to the Committee's charter and will receive comment from members of the public.

DATE: June 24, 1997, 9:00 a.m.–4:00 p.m.

PLACE: Adam's Mark Hotel, 939 Ridge Lake Blvd., Memphis, TN 38120.

SUPPLEMENTARY INFORMATION: The President establish the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995, and extended its tenure by Executive Order 13034, January 30, 1997. The purpose of this Committee is to review and provide recommendations on the government's investigation of possible chemical and biological weapons exposure incidents during the Gulf War and on implementation of the Committee's prior recommendations. The Committee reports to the President through the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs. The Committee members have expertise relevant to the functions of the committee and are appointed by the President from non-Federal sectors.

Tentative Agenda

Tuesday, June 24, 1997

9:00 a.m. Call to order; Public comment
10:15 a.m. Briefings related to implementation of *Final Report* recommendations
11:00 Break
11:15 a.m. Briefings related to chemical warfare agent exposure issues
12:15 p.m. Lunch
1:45 p.m. Briefings related to chemical warfare agent exposure issues (cont.)
3:45 p.m. Committee and staff discussion: Next steps
4:00 p.m. Meeting adjourned

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed below at least five business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations from individuals who have not yet had an opportunity to address the Advisory Committee. Priority will be given to Gulf War veterans whose accounts of firsthand experience with chemical and biological warfare agent detections previously have not been conveyed to the Committee. The panel chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. People who wish to file written statements with the Advisory Committee may do so at any time.

FOR FURTHER INFORMATION CONTACT: Michael E. Kowalok or Nancy Rocha, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, N.W., suite 1000, Washington, DC 20005, Telephone: (202) 761–0066, Fax: (202) 761–0310.

Dated: May 19, 1997.

C.A. Bock,

Presidential Advisory Committee on Gulf War Veterans' Illnesses.

[FR Doc. 97–13491 Filed 5–21–97; 8:45 am]

BILLING CODE 3610–26–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26718]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

May 16, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the applicant(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the applicant(s) and/or declaration(s) should submit their views in writing by June 9, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alabama Power Company, et al. (70–8461)

Alabama Power Company, 600 North 18th Street, Birmingham, Alabama 35291, (''Alabama''), Georgia Power Company, 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308 (''Georgia''), Gulf Power Company, 500 Bayfront Parkway, Pensacola, Florida 32501 (''Gulf''), Mississippi Power Company, 2992 West Beach, Gulfport, Mississippi 39501 (''Mississippi''), and Savannah Electric and Power Company, 600 East Bay Street, Savannah, Georgia 31401 (''Savannah'') (collectively, ''Operating Companies''), electric public utility subsidiaries of The Southern Company, a registered holding company, have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54 thereunder.

By order dated December 15, 1994 (HCAR No. 26187) (''December 1994 Order''), the Operating Companies were authorized to form separate special purpose subsidiaries. Each special purpose subsidiary would issue and sell preferred securities in one or more series from time to time through December 31, 1997. In the December 1994 Order, Georgia was authorized to issue $100 million of preferred securities and jurisdiction was reserved pending completion of the record over the issuance of preferred securities in the amount of $175 million for Alabama, $200 million for Georgia, $15 million for Gulf, $15 million for Mississippi and $10 million for Savannah.

By order dated January 17, 1996 (HCAR No. 26462) (''January 1996 Order''), Alabama was authorized to issue $97 million of preferred securities and jurisdiction was reserved pending completion of the record over the issuance of preferred securities in the amount of $78 million for Alabama, $200 million for Georgia, $15 million for Gulf, $15 million for Mississippi and $10 million for Savannah.

By post-effective amendment dated June 18, 1996, the Operating Companies requested that the authority to issue preferred securities be increased to $250 million for Alabama, $500 million for Georgia, $60 million for Gulf, $60 million for Mississippi and $35 million for Savannah. In the case of Alabama and Georgia, such amounts were in addition to the amounts authorized by the December 1994 Order and the January 1996 Order. The Operating Companies also requested that the

authority be extended through December 31, 2001.

By order dated August 26, 1996 (HCAR No. 26560) (''August 1996 Order'') Georgia was authorized to issue $400 million of preferred securities and the Operating Companies were authorized, pending completion of the record, to effect the sale of preferred securities in one or more series from time to time through December 31, 2001 in the amount of $250 million for Alabama, $100 million for Georgia, $60 million for Gulf, $60 million for Mississippi and $35 million for Savannah.

By subsequent orders (HCAR Nos. 26644, 26657 and 26660, dated January 14, 1997, January 29, 1997 and February 5, 1997, respectively) Alabama, Gulf and Mississippi were authorized to sell preferred securities in respective amounts of $250 million, $60 million and $55 million. Currently, the Commission has reserved jurisdiction over the issuance and sale of additional preferred securities in the amounts of $100 million for Georgia, $5 million for Mississippi and $35 million for Savannah (collectively, ''Reserved Preferred'').

The Operating Companies now request additional authority to sell preferred securities (''New Preferred''), as follows: $500 million for Alabama, $400 million for Georgia, $50 million for Gulf, $70 million for Mississippi, and $5 million for Savannah. The applicants request that such authority be in addition to the Reserved Preferred. The Operating Companies also ask that the Commission reserve jurisdiction, pending completion of the record, over the issuance and sale of the Reserved Preferred and New Preferred, through December 31, 2005, in aggregate amounts of up to: $500 million for Alabama, $500 million for Georgia, $50 million for Gulf, $75 million for Mississippi and $40 million for Savannah (Reserved Preferred, together with New Preferred, are hereinafter called ''Preferred Securities'').

Each Operating Company will acquire all of the common stock (''Common Securities'') or all of the general partnership interests, as the case may be, of its Special Purpose Subsidiary for an amount up to 21% of the total equity capitalization from time-to-time of such Special Purpose Subsidiary (''Equity Contribution''). Each Operating Company may issue and sell to its Special Purpose Subsidiary, at any time or from time-to-time in one or more series, subordinate debentures, promissory notes or other debt instruments (''Notes'') governed by an indenture or other document, and the Special Purpose Subsidiary will apply both the Equity Contribution and the proceeds from the sale of Preferred Securities to purchase Notes of such Operating Company. Alternatively, each Operating Company may enter into a loan agreement or agreements with its Special Purpose Subsidiary under which it will loan to the Operating Company (''Loans'') both the Equity Contribution and the proceeds from the sale of the Preferred Securities evidenced by Notes. Each Operating Company may also guarantee (''Guaranties'') the payment of dividends or distributions on the Preferred Securities, payments to the Preferred Securities holders of amounts due upon liquidation or redemption of the Preferred Securities and certain additional amounts that may be payable regarding the Preferred Securities.

Each Note will have a term, including extensions, of up to 50 years. Prior to maturity, each Operating Company will pay only interest on its Notes at a rate equal to the dividend or distribution rate on the related series of Preferred Securities. The dividend or distribution rate may be either fixed or adjustable, determined on a periodic basis by auction or remarketing procedures, in accordance with a formula or formulae based upon certain reference rates, or by other predetermined methods. Such interest payments will constitute each Special Purpose Subsidiary's only income and will be used by it to pay monthly dividends or distributions on the Preferred Securities issued by it and dividends or distributions on the common stock or the general partnership interests of such Special Purpose Subsidiary.

Dividend payments or distributions on the Preferred Securities will be made monthly, will be cumulative and must be made to the extent that funds are legally available. However, each Operating Company will have the right to defer payment of interest on its Notes for up to five years, provided that, if dividends or distributions on the Preferred Securities of any series are not paid for up to 18 consecutive months, then the holders of the Preferred Securities of such series may have the right to appoint a trustee, special general partner or other special representative to enforce the Special Purpose Subsidiary's rights under the related Note and Guaranty. Each Special Purpose Subsidiary will have the parallel right to defer dividend payments or distributions on the related series of Preferred Securities for up to five years. The dividend or distribution rates, payment dates, redemption and other similar provisions of each series of Preferred Securities will be substantially identical to the interest rates, payment dates, redemption and other provisions of the related Note issued by the Operating Company.

The Notes and related Guaranties of each Operating Company will be subordinate to all other existing and future indebtedness for borrowed money of such Operating Company and will have no cross-default provisions with respect to other indebtedness of the Operating Company. However, each Operating Company may not declare and pay dividends on its outstanding preferred or common stock unless all payments due under its Notes and Guaranties have been made.

It is expected that each Operating Company's interest payments on the Notes issued by it will be deductible for federal income tax purposes and that its Special Purpose Subsidiary will be treated as a partnership for federal income tax purposes. Consequently, holders of the Preferred Securities will be deemed to have received partnership distributions in respect of their dividends or distributions from the respective Special Purpose Subsidiary and will not be entitled to any ''dividends received deduction'' under the Internal Revenue Code.

The Preferred Securities are optionally redeemable by the Special Purpose Subsidiary at a price equal to their par or stated value or liquidation preference, plus any accrued and unpaid dividends or distributions, at any time after a specified date not later than 10 years from their date of issuance or upon the occurrence of certain events. The Preferred Securities of any series may also be subject to mandatory redemption upon the occurrence of certain events. Each Operating Company also may have the right in certain cases to exchange the Preferred Securities of its Special Purpose Subsidiary for the Notes or other junior subordinated debt of the Operating Company.

In the event that any Special Purpose Subsidiary is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments, it may also have the obligation to ''gross up'' such payments so that the holders of the Preferred Securities will receive the same payment after such withholding or deduction as they would have received if no such withholding or deduction were required. In such event, the related Operating Company's obligations under its Note and Guaranty may also cover such ''gross up'' obligation. In addition, if any Special Purpose Subsidiary is required to pay taxes on income derived from interest payments on the Notes, the

related Operating Company may be required to pay additional interest equal to the tax payment. Each Operating Company, individually, expects to apply the net proceeds of the Loans to the repayment of outstanding short-term debt, for construction purposes, and for other gereral corporate purposes, including the redemption or other retirement of outstanding senior securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13453 Filed 5–21–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22665; 812–10456]

Royce Global Trust, Inc., et al.; Notice of Application

May 16, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Royce Global Trust, Inc., Royce Mirco-Cap Trust, Inc. (''RMC'') Royce Value Trust, Inc. (''RVT'') (collectively, the foregoing are the ''Funds''), and Quest Advisory Corp. (''Quest'').

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act that would grant an exemption from section 19(b) of the Act and rule 19b–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit the Funds to make periodic distributions of long-term capital gains in any one taxable year, so long as they maintain in effect distribution policies with respect to their preferred stock calling for periodic dividends of a specified percentage of the liquidation preference of a Fund's preferred stock or distribution policies with respect to their common stock calling for periodic distributions of an amount equal to a fixed percentage of a Fund's net asset value or the market price per share of common stock or a fixed dollar amount.

FILING DATES: The application was filed on December 6, 1996, and amended on May 9, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or my mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 10, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549. Applicants, 1414 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund is a closed-end management investment company organized as a Maryland corporation. Each Fund issues common stock and, in addition, RVT has outstanding one class of preferred stock. Each Fund's investment objective is to seek long-term capital appreciation by investing in a portfolio of equity securities. Quest is the investment adviser of the Funds.

2. The Funds wish to institute dividend payment policies (''specified periodic payments'') with respect to the RVT preferred stock an any other preferred stock that may be issued by the Funds calling for periodic dividends in an amount equal to a specified percentage of the liquidation preference of such Funds's preferred stock. The specified percentage may be determined at the time the preferred stock is initially issued, pursuant to periodic remarketings or auctions, or otherwise. The specified periodic payments may include long-term capital gains so long as a Fund maintains in effect the specified periodic payments.

3. The Funds also wish to institute distribution policies (''periodic pay-out policies'') with respect to their common stock calling for periodic (but in no event, more frequently than quarterly)[1] distributions of an amount equal to a fixed percentage of such Funds's net asset value or market price per share of common stock at the time of the declaration or payment or of a fixed dollar amount. Such payments may include long-term capital gains so long as a Fund maintains in effect the periodic pay-out policies.

4. The periodic pay-out policy will be initially established and reviewed at least annually in light of the Fund's performance by each Fund's board of directors and will be changeable at the discretion of the Fund's board of directors. The annual distribution rate under the periodic pay-out policy generally will be independent of the Fund's performance in any of the first three quarters of the Fund's fiscal year. The rate may be adjusted in a Fund's fourth fiscal quarter in light of such Fund's performance for the fiscal year to enable the Fund to comply with the requirements of the Internal Revenue Code of 1986, as amended (the ''Code''), for the year.

5. Applicants request that relief be extended to the Funds and to each registered closed-end investment company to be advised in the future by Quest or an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Quest. (Such investment companies are also the ''Funds.'')

Applicant's Legal Analysis

1. Section 19(b) provides that registered investment companies may not, in contravention of such rules, regulations, or orders as the SEC may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1 limits the number of capital gains distributions, as defined in section 852 (b)(3)(C) of the Internal Revenue Code of 1986, as amended, that the Funds may make with respect to any one taxable year to one, plus a supplemental distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional long-term capital gains distribution made to avoid the excise tax under section 4982 of the Code. In addition, Revenue Ruling 89–81 takes the position that if a regulated investment company has two classes of shares, it may not designate distributions made to either class in any years as consisting of more than such class's proportionate share of particular types of income, such as capital gains.

[1] The frequency of the specific periodic payments with respect to preferred stock of the Funds and the periodic pay-out policies with respect to common stock of the Funds will not be related to one another in any way.

2. Rule 19b–1, by limiting the number of net long-term capital gain distributions that the Funds may make with respect to any one year, prevents the operation of the specified periodic payments for the preferred stock and the periodic pay-out policies for the common stock whenever the Fund's realized net long-term capital gains in any year exceed the total of the periodic distributions that under rule 19b–1 may include such capital gains. In that situation, the rule effectively forces the periodic dividends and distributions, that under the rule may not include such capital gains, to be treated as returns of capital (to the extent net investment income and realized short-term capital gains are insufficient), even though net realized long-term capital gains would otherwise be available therefor. The net long-term capital gains in excess of the periodic distributions permitted by the rule then must either be added as an ''extra'' on one of the permitted capital gains distributions on the common stock, thus exceeding the total annual amount called for by the periodic pay-out policy or be retained by the Funds (with the Funds paying taxes thereon). Furthermore, because of Revenue Ruling 89–81, any ''extra'' payments of long-term capital gains to holders of common stock require proportionate allocations of such ''extra'' long-term capital gains to the preferred stock, which applicants state can be extremely difficult to do.

3. Applicants believe that granting the requested relief would limit the Funds' return of capital distributions to that amount necessary to make up any shortfall between the Funds' targeted annual distribution and the total of its investment income and capital gains. Applicants state that the likelihood that the Funds' shareholders would be subject to additional tax return complexities involved when the Funds retain and pay taxes on long-term capital gains would also be avoided. In addition, with respect to the common stock, applicants state that the discount at which each Fund's shares of common stock trade will be reduced if the Funds are permitted to pay dividends with respect to their common stock more frequently than annually.

4. One of the concerns leading to the adoption of section 19(b) and rule 19b–1 was that shareholders might be unable to distinguish between frequent distributions of capital gain and dividends from investment income. In the case of preferred stock, applicants state that there is little chance for investor confusion since all an investor expects to receive is the specified dividend distribution for any particular dividend period, and no more. Applicants argue that as a further protection against investor confusion, in accordance with rule 19a–1, a separate statement showing the net investment income component of the distribution would accompany each preferred stock dividend, with a statement being provided near the end of the last dividend period in a year indicating the source or sources of each distribution that was made on the preferred stock during the year. In the case of common stock, applicants argue that in accordance with rule 19a–1 under the Act, a separate statement showing the source of the distribution (net investment income, net realized capital gains, or returns of capital) will accompany each common stock distribution (or the confirmation of the reinvestment thereof under the Funds' dividend reinvestment plan). In addition, for both the common and the preferred stock, the amount and source or sources of distributions received during the year will be included on each Fund's IRS Form 1099–DIV reports sent to each shareholder who received distributions during the year (including shareholders who sold shares during the year). This information on an aggregate basis will also be included in the Funds' annual report to shareholders. Through these disclosures and other communications with shareholders, applicants state that the Funds' shareholders will understand that the Funds' fixed distributions are not tied to its investment income and realized capital gains and will not represent yield or investment return.

5. Another concern that led to the adoption of section 19(b) and rule 19b–1 was that frequent capital gain distributions could facilitate improper fund distribution practices, including in particular the practice of urging an investor to purchase fund shares on the basis of an upcoming dividend (''selling the dividend''), where the dividend results in an immediate corresponding reduction in net asset value and is in effect a return of the investor's capital. Applicants believe that this concern does not apply to closed-end investment companies, such as the Funds, which do not continuously distribute common stock. Although, to date, RMC and RVT have completed rights offerings of additional shares of common stock to shareholders, each of the offerings were short in duration and involved a relatively small number of new shares. The rights were non-transferable and offered only by means of a statutory prospectus.

6. In addition, applicants state that a solicitation fee payment to broker-dealers in rights offerings of up to 3% may be required in order for the broker-dealers to promptly forward materials to shareholders and respond to investor inquiries. Applicants state that without such solicitation fee, adequate attention by broker-dealers to the rights offering of Fund shares of common stock could not be assured. Further, applicants state that they will limit the magnitude of the discount between the subscription price for the rights offering and the pricing date market or bid price to not more than $.50 in order to minimize the dilution of existing investor investments and to avoid any appearance of ''selling the dividend.''

7. Furthermore, applicants state that the concern of selling the dividend is not applicable to preferred stock, which entitles a holder to a specified periodic dividend and no more and, like a debt security, is initially sold at a price based on its liquidation preference plus an amount equal to any accumulated dividends.

8. Applicants state that another concern leading to the adoption of section 19(b) and rule 19b–1, increase in administrative costs, is not present because the Funds will continue to make periodic distributions regardless of what portion thereof is composed of capital gains.

9. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested exemption meets the standards set forth in section 6(c).

Applicants' Condition

Applicants agree that the order granting the requested relief for each Fund's periodic pay-out policies with respect to its common stock shall terminate with respect to such Fund upon the effective date of a registration statement under the Securities Act of 1933, as amended, for any future public offering of common stock of such Fund other than: (i) a rights offering of common stock to shareholders of such Fund, provided that (a) such offering does not include the payment of solicitation fees to brokers in excess of 3% of the subscription price per share or the payment of any other commissions or underwriting fees in connection with the offering or exercise of the rights, (b) the rights will not be

exercisable between the date a dividend to such Fund's common stockholders is declared and the record date of such dividend, (c) such Fund has not engaged in more than one rights offering during any given calendar year, and (d) the subscription price for a share of common stock in such Fund's rights offering is not more than $0.50 per share below the closing market or bid price, as the case may be, for the common stock on the pricing date for the rights offering; or (ii) an offering in connection with a merger, consolidation, acquisition, or reorganization; unless the Fund has received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13454 Filed 5–21–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22664; 812–10658]

USLIFE Income Fund, Inc., et al.; Notice of Application

May 16, 1997.

AGENCY Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: USLIFE Income Fund, Inc. (the ''Fund'') and USLIFE Advisers, Inc. (the ''Adviser'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) granting an exemption from section 15(a).

SUMMARY OF APPLICATION: USLIFE Corporation (''USLIFE''), the parent of the Adviser, has agreed to merge with a wholly-owned sudsidiary of American General Corporation (''American General''). The indirect change in control of the Adviser will result in the assignment, and thus the termination, of the existing investment advisory agreement (''Existing Advisory Agreement'') between the Fund and the Adviser. The order would permit the implementation, without shareholder approval, of a new investment advisory agreement (the ''New Advisory Agreement'') for a period of up to 120 days following the date of the change in control of USLIFE (but in no event later than October 15, 1997) (the ''Interim Period''). The order also would permit the Adviser to receive all fees earned under the New Advisory Agreement following shareholder approval.

FILING DATE: The application was filed on May 12, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 10, 1997 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: 125 Maiden Lane, New York, NY 10038.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney-Adviser, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is a Maryland corporation registered under the Act as a closed-end, management investment company. The Adviser, a registered investment adviser under the Investment Advisers Act of 1940, serves as the investment adviser for the Fund pursuant to the Existing Advisory Agreement.

2. On February 13, 1997, USLIFE, a life insurance holding company, announced its agreement to merge with a wholly owned subsidiary of American General (the ''Merger''). As a result of the Merger, USLIFE will become a 100% owned subsidiary of American General. The Merger is subject to the satisfaction of certain conditions, including approval by the shareholders of both USLIFE and American General. Applicants expect the Merger to be consummated on or about June 17, 1997.

3. Applicants request an exemption to permit implementation, prior to receiving shareholder approval, of the New Advisory Agreement between the Fund and the Adviser. The requested exemption will cover the Interim Period of not more than 120 days beginning on the date on which USLIFE and a wholly owned subsidiary of American General consummate the Merger and continuing through the date the New Advisory Agreement is approved or disapproved by the shareholders of the Fund (but in no event later than October 15, 1997). It is anticipated that the New Advisory Agreement will contain identical terms and conditions as the Fund's Existing Advisory Agreement, except for its effective date and escrow provisions. The aggregate contractual rate chargeable for advisory services will remain the same as in the Existing Advisory Agreement. The Fund proposes to implement the New Advisory Agreement during the Interim Period, subject to the conditions contained in the application.

4. The Fund's board of directors is scheduled to meet in-person on May 14, 1997 for the purpose of considering the New Advisory Agreement in accordance with section 15(c) of the Act. The board will receive such information as the directors deem necessary to evaluate whether the terms of the New Advisory Agreement are in the best interests of the Fund and its shareholders. The Fund expects to prepare the required proxy materials and schedule a shareholder meeting as soon as reasonably practicable. Applicants believe that the Interim Period is reasonable and in the best interest of the Fund's shareholders because it will allow sufficient time for preparation, mailing, consideration, and return of proxy materials in order to obtain shareholder approval.

5. Applicants also request an exemption to permit the Adviser to receive from the Fund all fees earned under the New Advisory Agreement implemented during the Interim Period if the New Advisory Agreement is approved by the shareholders of the Fund. The fees to be paid during the Interim Period are at the same rate as the fees currently payable by the Fund.

6. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution that will serve as escrow agent. The fees payable to the Adviser during the Interim Period will be paid into an interest-bearing escrow account maintained by the escrow agent. Amounts in the escrow account (including interest earned on such fees) will be paid to the Adviser only if shareholders of the Fund approve the New Advisory Agreement. If shareholders of the Fund fail to approve the New Advisory Agreement, the escrow agent will pay to the Fund the

escrow funds (including interest earned). The escrow agent will release the escrow funds only upon receipt of a certificate from an officer of the Fund who is not an interested person of the Adviser stating, if the escrow funds are to be delivered to the Adviser, that the New Advisory Agreement has received the requisite Fund shareholder vote, or, if the escrow funds are to be delivered to the Fund, that the Interim Period has ended, and the New Advisory Agreement has not been approved by the requisite shareholder vote. Before any such certificate is sent, the directors of the Fund would be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as an investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such investment company. Section 15(a) further requires that such written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor or the transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Beneficial ownership of more than 25% of a company's voting securities is presumed to constitute control.

2. Applicants state that, upon completion of the Merger, American General will own 100% of the voting securities of USLIFE, the Adviser's parent. Applicants therefore believe that the Merger will result in an ''assignment'' of the Existing Advisory Agreement between the Fund and the Adviser within the meaning of section 2(a)(4).

3. Rule 15a–4 provides, in pertinent part, that if an investment advisory contract with an investment company is terminated by assignment, the adviser may continue to act as such for 120 days under a written contract that has not been approved by the company's shareholders, only to the extent that (a) the new contract is approved by the company's board of directors (including a majority of directors that are not ''interested persons'' of the investment company), (b) the compensation to be paid under the new contract does not exceed the compensation which would have been paid under the contract most recently approved by shareholders of the investment company, and (c) neither the investment adviser nor any controlling person of the investment adviser ''directly or indirectly receives money or other benefit'' in connection with the assignment. Applicants state that they cannot rely on rule 15a–4 because of the benefits to USLIFE and its shareholders arising from the Merger.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

5. Applicants contend that the Fund will prepare the required proxy materials as expeditiously as possible and shareholder meetings are expected to be held as soon as reasonably practicable. Applicants believe that the timing of the shareholder meetings may not provide an adequate solicitation period to obtain approval of the New Advisory Agreement by the Fund's shareholders prior to effecting the Merger.

6. Applicants believe that the requested relief is necessary, as it would permit continuity of investment management services to the Fund during the Interim Period. Applicants submit that the scope and quality of services provided to the Fund during the Interim Period will not be diminished. During the Interim Period, the Fund would operate under the New Advisory Agreement, which is anticipated to be identical to the Existing Advisory Agreement, except for its effective date and escrow provisions. Applicants believe that the level of service will remain the same.

7. Applicants represent that the best interests of the Fund's shareholders would be served if the Adviser receives fees for services during the Interim Period as provided herein. In addition, applicants believe that it would be unjust to deprive the Adviser of fees due to a change in control of the Adviser's parent. Finally, the fees to be paid during the Interim Period are at the same rate as the fees currently payable by the Fund under the Existing Advisory Agreement.

Applicant's Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Advisory Agreement will have the identical terms and conditions as the Existing Advisory Agreement, except for provisions relating to when such agreement will be effective and provisions necessary to effectuate the escrow arrangement.

2. The investment advisory fees payable by the Fund to the Adviser during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such amounts) will be paid (a) to the Adviser in accordance with the New Advisory Agreement, after the requisite approval is obtained, or (b) to the Fund, in the absence of such approval.

3. The Fund will hold a meeting of shareholders to vote on approval of the New Advisory Agreement on or before the 120th day following the termination of the Existing Advisory Agreement (but in no event later than October 15, 1997).

4. The Fund will not bear the costs of preparing and filing the application. The fund will not bear any costs relating to the solicitation of shareholder approval of the Fund's shareholders necessitated by consummation of the Merger.

5. The Adviser will take all appropriate steps so that the scope and quality of advisory services provided to the Fund during the Interim Period will be at least equivalent, in the judgment of the Funds's board of directors, including a majority of the non-interested directors, to the scope and quality of services previously provided. If personnel providing material services during the Interim Period change materially, the Adviser will apprise and consult with the board of directors of the Fund to assure that it, including a majority of the non-interested board members, is satisfied that the services provided will not be diminished in scope or quality.

6. The board of directors of the Fund, including a majority of the non-interested directors, will have approved the New Advisory Agreement in accordance with the requirement of section 15(c) of the Act prior to termination of the Existing Advisory Agreement.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13455 Filed 5–21–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Order of Suspension of Trading; Combined Companies International Corp. (File No. 500–1)

May 19, 1997.

It appears to the Securities and Exchange Commission that there is a lack of adequate and accurate current information concerning the securities of Combined Companies International Corp. (''CCIC''), of Las Vegas, Nevada. Questions have been raised about publicly-disseminated information concerning, among other things: (1) Assets reported on CCIC's financial statements, which were included in a registration statement and periodic reports filed with the Commission; (2) the lack of audited financial statements included in a registration statement and periodic filings of CCIC; (3) the failure by CCIC to make required periodic and other filings with the Commission; and (4) the market for the securities of CCIC.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:00 a.m. EST, May 19, 1997 through 11:59 p.m. EST, on June 2, 1997.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–13557 Filed 5–19–97; 4:27 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38640; File No. SR–AMEX–96–45]

Self-Regulatory Organizations; American Stock Exchange, Inc. Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating to the Establishment of a 4:02 p.m. Closing Time for Equity and Narrow-Based Index Options Trading

May 14, 1997.

I. Introduction

On November 22, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] On December 17, 1996, the Exchange Filed Amendment No. 1 to the rule proposal.[3] On May 13, 1997, the Exchange filed Amendment No. 2 to the rule proposal.[4]

Notice of the substance of the proposed rule change and Amendment No. 1 was provided by issuance of a release[5] and by publication in the **Federal Register**.[6] No comments were received. This order approves the proposed rule change, as amended, and solicits comments on Amendment No. 2.

II. Description of the Proposal

The Exchange proposes to amend Rules 1, 903C, 918 and 980C governing the hours of trading in equity options and narrow-based index options. Currently, the ten minute period for trading equity and narrow-based index options after the close of the underlying stocks allows options traders to respond to late reports of closing prices over the consolidated tape. The proposed rule change will result in the close of trading in equity and narrow-based index options at 4:02 p.m. instead of the existing close of 4:10 p.m.

The Exchange also proposes to amend Rule 1, Commentary .02(2) to provide that a closing rotation in non-expiring options may be held five minutes after news of such rotation is publicly disseminated. Currently, the rule provides for a ten minute notice period of a closing rotation.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Section 6(b)(5).[7] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market, and in general, to further investor protection and the public interest.

The Commission believes that it is reasonable for the Exchange to amend its rules to close trading in equity and narrow-based index options at 4:02 p.m., versus the existing 4:10 p.m. close. Changing the closing time for these options to 4:02 p.m. preserves the Exchange's stated need to continue trading options for some period of time after the close of trading in the underlying securities. The Exchange has stated that this two minute extension from the close of the stock markets will allow options traders to respond to late reports of closing prices over the consolidated tape, thereby bringing options quotes in line with the closing price of the underlying security. Due to improvements in the processing and reporting of transactions, the Exchange believes that two minutes of options trading after the underlying equities close is sufficient to bring option quotes in to line with the closing prices of the underlying securities.

In determining an appropriate closing time, the Exchange has also considered problems that might result when the exchange remains open after the close of the primary exchange for the underlying stocks. The Exchange states that a number of issuers have adopted the practice of disseminating important corporate news after the close of trading on the primary equity exchange in order to minimize the short-term disruptive effect of the news on the market price of the stock by allowing investors the opportunity to digest the significance of the news after the markets have closed. These announcements, if made while options markets are still trading, impact narrow-based index options, as well as equity options, because a significant news announcement on one component of a narrow-based index may have substantial impact on that index. Despite the fact that most Exchange products trade until 4:10 p.m., important corporate news is often disseminated between 4:00 and 4:10 p.m. Consequently, the Exchange states that because the principal market for the underlying stock is closed, option specialists and market makers have experienced difficulty in making orderly options markets due to their inability to hedge or otherwise offset market risk with transactions in the underlying

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[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 249.19b–4.

[3] Letter from Claire McGrath, Managing Director and Special Counsel, Amex, to Ivette Lopez, Assistant Director, Division of Market Regulation, Commission, dated December 16, 1996 (''Amendment No. 1''). Amendment No. 1 proposes to amend the closing time to 4:02 p.m. for narrow-based index options, as well as equity options.

[4] Letter from Claire McGrath, Managing Director and Special Counsel, Amex, to Ivette Lopez, Assistant Director, Division of Market Regulation, Commission, dated May 13, 1997 (''Amendment No. 2''). Amendment No. 2 proposes to amend Rule 1, Commentary .02(2) to provide that a closing rotation in non-expiring options may be held five minutes after news of such rotation is publicly disseminated. Currently, the rule provides for a ten minute notice period of a closing rotation.

[5] Securities Exchange Act Release No. 38123 (January 6, 1997).

[6] 62 FR 1786 (January 13, 1997).

[7] 15 U.S.C. § 78f(b)(5).

equity. Further, the Exchange believes that public customers are unable to react as quickly as professional traders to significant news releases made prior to the close of options trading. The Exchange states that a change in the options trading close to 4:02 p.m. would limit the disruptive effect on Exchange products that these significant news announcements can create.

Accordingly, the Commission finds that a closing time of 4:02 p.m. for equity and narrow-based index options is a reasonable means to address the Exchange's desire to balance the need for some extended trading period with the need to prevent negative impact from issuers' major news announcements made while only the options markets remain open.

The Commission also finds that permitting a closing rotation in non-expiring options five minutes after news of such rotation is publicly disseminated is reasonable. The Exchange states that the change from a ten minute notice period to a five minute notice period will conform the Exchange's rule to the rules of the other exchanges, such as the Chicago Board Options Exchange, Inc. (''CBOE'').[8]

It is contemplated that the Exchange will implement this rule change on or about June 23, 1997.[9]

The Commission finds good cause for approving Amendment No. 2 to the filing prior to the 30th day after the date of publication of the notice of the filing. Amendment No. 2 serves to conform the Exchange's proposal to other exchanges' rules. Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve Amendment No. 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-AMEX–96–45, and should be submitted by June 12, 1997.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR-Amex–96–45) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–13460 Filed 5–21–97; 8:45 am]

BILLING CODE 8010–01–M

[8] *See* SR–CBOE–96–71 (amending CBOE Rule 6.2, Interpretation .02 to permit a five minute notice period for closing rotations).

[9] Phone conversation between Claire McGrath, Exchange and Janice Mitnick, Commission, on May 14, 1997.

[10] 15 U.S.C. § 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38543; File No. SR–CBOE–96–71]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to the Establishment of a 3:02 p.m. Closing Time for Equity and Narrow-Based Index Options Trading

May 14, 1997.

I. Introduction

On October 25, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] On February 24, 1997, the Exchange filed an amendment to the rule proposal.[3]

Notice of the substance of the proposed rule change was provided by issuance of a release[4] and by publication in the **Federal Register**.[5] No comments were received. This order approves the proposed rule change, as amended, and solicits comments on Amendment No. 1.

II. Description of the Proposal

The exchange proposes to amend Rule 6.1, Interpretation .01 and Rule 24.6 governing the hours of trading in equity options and narrow-based index options. Currently, the ten minute period for trading equity and narrow-based index options after the close of the underlying stocks allows options traders to respond to late reports of closing prices over the consolidated tape. The proposed rule change will result in the close of trading in equity and narrow-based index options at 3:02 p.m.[6] instead of the existing close of 3:10 p.m.

The Exchange also proposes to amend its rules to provide for a five minute notice period before a trading rotation may begin after the close of trading. Currently, a ten minute notice must be given under CBOE Rule 6.2, Interpretation .02. The Exchange states that it is now able to send notice to its members of its intent to have a closing rotation almost instantaneously.[7] The Exchange also proposes to amend its trading rotation rule, Interpretations .01 and .03 and Rule 6.2, to reflect the changes in the closing time from 3:10 p.m. to 3:02 p.m. for equity options and narrow-based index options.

Finally, the Exchange is proposing to amend Interpretation .01 to Rule 6.1 to make it clear that the Board may designate a person or persons to change the hours for the trading of options when unusual conditions exist. This change is consistent with the Exchange's current Rule 24.6.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Section 6(b)(5).[8] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, perfect

[1] U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Timothy Thompson, Senior Attorney, CBOE, to Janice Mitnick, Attorney, Division of Market Regulation, Commission, dated February 24, 1997 (''Amendment No. 1''). Amendment No. 1 describes the purpose for the proposed change to the required notice period, from ten minutes to five, prior to the commencement of a trading rotation.

[4] Securities Exchange Act Release No. 37988 (November 26, 1996).

[5] 61 FR 64405 (December 4, 1996).

[6] All time references are in Central Time.

[7] See Amendment No. 1.

[8] 15 U.S.C. § 78f(b)(5).

the mechanism of a free and open national market, and in general, to further investor protection and the public interest.

The Commission believes that it is reasonable for the Exchange to amend its rules to close trading in equity and narrow-based index options at 3:02 p.m., versus the existing 3:10 p.m. close. Changing the closing time for these options to 3:02 p.m. preserves the Exchange's stated need to continue trading options for some period of time after the close of trading in the underlying securities. The Exchange has stated that this two minute extension from the close of the stock markets will allow options traders to respond to late reports of closing prices over the consolidated tape, thereby bringing options quotes into line with the closing price of the underlying security. Due to improvements in the processing and reporting of transactions, the Exchange believes that two minutes of options trading after the underlying equities close is sufficient to bring options quotes into line with the closing prices of the underlying securities.

In determining an appropriate closing time, the Exchange has also considered problems that might result when the Exchange remains open after the close of the primary exchange for the underlying stocks. The Exchange states that a number of issuers have adopted the practice of disseminating important corporate news after the close of trading on the primary equity exchange in order to minimize the short-term disruptive effect of the news on the market price of the stock by allowing investors the opportunity to digest the significance of the news after the markets have closed. These announcements, if made while options markets are still trading, impact narrow-based index options, as well as equity options, because a significant news announcement on one component of a narrow-based index may have substantial impact on that index. Despite the fact that most Exchange products trade until 3:10 p.m., important corporate news is often disseminated between 3:00 and 3:10 p.m. Consequently, the Exchange states that it is often deluged with option orders as a result of a significant news announcement after 3:00 p.m., most often made between 3:02 p.m. and 3:10 p.m. The Exchange has found that these orders have a disruptive effect on the options market at a time when the Exchange is attempting to close in a fair and orderly fashion.[9] The Exchange also states that as a result of these news announcements, orders are regularly routed through the Exchange's Retail Automatic Execution System (''RAES'') and executed in rapid succession on markets that have not had a chance to be updated to reflect the significant news.[10] The Exchange states that a change in the options trading close to 3:02 p.m. would limit the disruptive effect on Exchange products that these significant news announcements can create.

Accordingly, the Commission finds that a closing time of 3:02 p.m. for equity and narrow-based index options is a reasonable means to address the Exchange's desire to balance the need for some extended trading period with the need to prevent negative impact from issuers' major news announcements made while only the options markets remain open.

The Commission also believes that it is reasonable for the Exchange to amend its rules to provide for a five minute notice period before a trading rotation may begin after the close of trading. The Exchange states that it is now able to send notice to its members of its intent to have a closing rotation almost instantaneously. The Commission concurs with the Exchange that it is appropriate to reduce the notice period, permitting the Exchange to allow the establishment of closing prices in as timely a manner as possible. The Commission also finds that the change from a ten minute notice to a five minute notice is reasonable in light of the Exchange's goal of appropriately disseminating information of a trading rotation while establishing closing prices in a timely manner.

Finally, the Commission finds that it is reasonable for the Exchange to amend Rule 6, Interpretations and Policies .01 to conform to Rule 24.6 clarifying that either the Board or its designee may change the hours of the trading of options when unusual conditions occur. The rule change will provide the Exchange with the necessary flexibility in order to respond to unusual market conditions.

It is contemplated that the Exchange will implement this rule change on or about June 23, 1997.[11]

The Commission finds good cause for approving Amendment No. 1 to the filing prior to the 30th day after the date of publication of the notice of the filing. Amendment No. 1 merely serves to effect a clarification to the Exchange's proposal and does not materially affect the substance of the proposal.[12] Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–71, and should be submitted by June 12, 1997.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–96–71) is approved.

[9] The Exchange notes that although it has the ability to call a ''fast'' market under current Exchange Rule 6.6 in an effort to deal with the problems caused by news announcements after 3:00 p.m., this procedure requires the assessment of the situation by two Floor Officials. As a result, the Exchange believes that the Rule 6.6 procedure does not permit the Exchange to act quickly enough to prevent the possible deleterious effects of an unexpected news announcement.

[10] Orders routed through the RAES system are assigned execution prices instantaneously as determined by the prevailing market quotes that exist at the time of the order's entry into the system. As a result, these orders might be assigned a price before the market-makers will have had the chance to update the quotes based upon the unexpected news announcement. To respond to the problem presented when issuers make significant news announcements during the ten minutes period after the close of trading in stocks, the Exchange filed a rule with the Commission which permits the Exchange to employ a system to suspend the operation of the RAES system in the event of news announcements near the close of trading. Securities Exchange Act Release No. 37885 (October 29, 1996), 61 FR 56724 (approving CBOE–96–55).

[11] Phone conversation between Timothy Thompson, Exchange and Janice Mitnick, Commission, May 14, 1997.

[12] *See* n.3, *supra.*

[13] 15 U.S.C. § 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13403 Filed 5–21–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38637; File No. SR–CBOE–97–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Trading of Index FLEX Options

May 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on March 13, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On May 14, 1997, CBOE submitted Amendment No. 1 (''Amendment No. 1'') to the filing to clarify issues related to priority procedures applicable to FLEX options.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to make certain changes to its rules governing the trading of Index FLEX options. Specifically, those changes involve a reduction in the percentage of a trade to which a Submitting Member indicating an intent to cross is entitled and the establishment of bid-offer spreads for certain Index FLEX trades.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make certain changes to the Exchange's rules governing the trading of Index FLEX options. Specifically, those changes involve a reduction in the percentage of a trade to which a Submitting Member indicating an intent to cross is entitled and the establishment of bid-offer spreads for certain Index FLEX trades. Since their inception,[2] Index FLEX options have relied on Appointed Market-Makers (''AMMs'') supplemented by Qualified Market-Makers (''QMMs) to provide liquidity for FLEX requests for quotes (''RFQs). AMMs are required, pursuant to Rule 24A.9(b), to enter a FLEX Quote in response to any RFQ on any FLEX Option of the class to which the AMM is appointed. A QMM may, but is not required to, enter a FLEX Quote in response to an RFQ.

As an inducement to attract volume that would otherwise be transacted in the over-the-counter market, the Exchange established percentage entitlements for the Exchange member that initiates FLEX bidding and offering by submitting an RFQ (''Submitting Member'') where the Submitting Member has indicated an intention to cross or act as principal on the trade and has matched or improved the best bid or offer (''BBO''). Generally, with some qualifications, the Submitting Member is entitled to 50% (½) of the trade in the case where the Submitting Member matches the BBO and 66.67% (⅔) of the trade where the Submitting Member improves the BBO.

To the extent Submitting Members accept their entire entitlement on a trade, half of the trade or less would remain for the other market-makers to share. Through experience the Exchange has learned these entitlements have discouraged participation by market-makers in the Index FLEX product. The Exchange has, therefore, decided in order to encourage more active participation by Exchange market-makers and to provide as liquid a market as possible for Index FLEX options, that the entitlement for Submitting Members should be reduced to the greater of 25% or a proportional share of the trade.[3] This means, for example, that if there are four market-makers participating on the trade in addition to the Submitting member then the Submitting member would be entitled to 25% of the trade even though this is greater than a proportional share (⅕) of the trade. However, if there were two market-makers participating on a trade along with a Submitting Member, the Submitting Member would be entitled to a proportional share of the trade, or ⅓ of the trade. This is different from the current entitlement for Submitting Members in Equity FLEX Options who are entitled only to 25% of the trade regardless of the number of participants to the trade. Consequently, the rule will be revised to separate the treatment of Index FLEX and Equity FLEX into different paragraphs.

The proposed rule change also amends the language of subparagraphs (e)(iii) (A) and (B) of Rule 24A.5 to state that a submitting member ''will have priority to execute'' the specified share of a trade that is the subject of a RFQ, instead of the term ''be permitted to execute.'' The Exchange initially adopted this rule language in Securities Exchange Act Release No. 37337 in order to clarify that a member may cross more than the designated share as to which he has priority if no one else is willing to trade at the same or a better price.[4] The current filing, however, inadvertently utilized the old rule language. Amendment No. 1 to the filing clarifies that the rule language will remain unchanged.

The Exchange is also proposing to make a second change to its rules governing Index FLEX Options. This change would impose maximum bid-offer spreads on certain Index FLEX Options. Currently, under Rule 24A.9(d), market-makers are not required to quote a minimum bid-offer spread in FLEX Options because of the unique nature of the product in which new series are established periodically by the submission of an RFQ. Through experience with the trading of the

[14] 17 CFR 200.30–3(a)(12).

[1] *See* Letter from Timothy H. Thompson, Senior Attorney, CBOE, to Steve Youhn, SEC, dated May 13, 1997.

[2] The Exchange was approved for trading FLEX options on February 24, 1993. *See* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993).

[3] The rule currently provides that the Submitting Member is entitled to the largest of the percentage of the trade (½ or ⅔), $1 million Underlying Equivalent Value, or the remaining Underlying Equivalent Value on a closing transaction valued at less than $1 million. These qualifications of $1 million Underlying Equivalent Value or the remaining Underlying Equivalent Value remain in the proposed rule.

[4] *See* Securities Exchange Act Release No. 37337 (June 19, 1996), 61 FR 33561 (June 27, 1996).

product over the last four years, however, the Exchange has determined it is appropriate to now establish maximum bid-offer spreads for Index FLEX AMMs and QMMs when quoting European exercise FLEX options overlying the S&P 100 Index or the S&P 500 Index with a time to expiration of more than two weeks and less than two years. The Exchange expects that the establishment of these spreads will increase customer confidence in the CBOE markets for these products. The establishment of these maximum bid-offer spreads will ensure tight markets for the majority of the Index FLEX RFQs submitted to the CBOE floor; the proposed spreads would have applied to 77% of the RFQs submitted in 1996. The Exchange also believes that if, as expected, the reduction in the entitlement of a trade to a Submitting Member encourages more active participation by market-makers in the quoting process, then bid-offer spreads, through competition, should decrease in any event.

The bid-offer spreads which are being established for European exercise options overlying the S&P 100 Index or the S&P 500 Index are as follows.

Options with a time to expiration greater than two weeks and less than or equal to one year shall have the following maximum bid/ask spreads:

Where the bid is	The maximum bid/ask spread is
Less than $5	¾ of $1
At least $5 but not more than $10.	$1
At least $10 but not more than $1.50.	
At least $20	$2

Options with a time to expiration greater than one year and less than two years shall have the following maximum bid/ask spreads:

Where the bid is	The maximum bid/ask spread is
Less than $10	$1.50
At least $10 but not more than $20.	$2
At least $20 but not more than $40.	$3
At least $40	$4

Because the proposed rules should encourage more active participation of market-makers in the establishment of bid-ask spreads and will require the quoting of spreads on Index FLEX options within a certain range, CBOE believes the proposed rules are consistent with and further the objectives of Section 6(b)(5) of the Act in that they are designed to improve communications to and from the Exchange's trading floor in a manner that promotes just and equitable principles of trade, prevents fraudulent and manipulative acts and practices, and maintains fair and orderly markets:

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–16 and should be submitted by June 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13404 Filed 5–21–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38646; File No. SR–DCC–96–13]

Self-Regulatory Organizations; Delta Clearing Corp.; Order Granting Approval of a Proposed Rule Change Relating to the Definitions of Trading Limits and Maximum Potential System Exposure

May 15, 1997.

On November 26, 1996, Delta Clearing Corp. (''DCC'') filed a proposed rule change (File No. SR–DCC–96–13) with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act'').[1] On January 10, 1997, DCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on January 30, 1997, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposed rule change.

Description

The proposed rule change amends DCC's procedures and provides for the issuance of Policy Statement 96–02 in order to revise DCC's current method of limiting its exposure to participants.[3] The term ''trading limit'' in DCC's procedures is replaced with the ''exposure limit.'' Section 204 and 2204 and the definitions of ''exposure limit'' in Section 101 and 2101 are amended to clarify that each participant has one exposure limit applicable to both repurchase agreement (''repo'') and option transactions.

The consequences of a participant exceeding its exposure limit are clarified so that a participant may continue to effect trades for clearance and settlement in the repo clearing

[5] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 38197 (January 23, 1997), 62 FR 4557.

[3] Policy Statement 96–02 described such items as the processes for rejecting trades and notification of the affected participants.

system or the options clearing system if DCC determines that the risk involved is *de minimis* (*i.e.*, the additional exposure is less than 5%). Previously, if a participant exceeded its trading limit, DCC was required to reject the participant's trades. Now, if a participant exceeds its exposure limit twice or more in one month, the revised rule obligates DCC to review with the participant and the insurer, if necessary, whether to change the participant's exposure limit.

The definition of maximum potential system exposure (''MPSE'') in the procedures also is revised to clarify and to limit the circumstances under which margin funds due and owing from participants may be deducted for purposes of determining MPSE. DCC will continue to include as a credit in calculating MPSE those margin funds due and owing from such participants at or before the immediately succeeding settlement time (1) That were called for by DCC in the ordinary course of entering trades into the options or repo clearing systems, (2) that were reflected in the daily margin report, and (3) that were not an additional margin requirement pursuant to Section 603 or 2603 of DCC's procedures.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that a clearing agency's rules be designed to ensure the safeguarding of securities and funds in its custody or control or for which it is responsible.[4] The Commission believes that DCC's proposal is consistent with the Act in that the proposed rule change should provide DCC with greater flexibility to manage and to address credit and liquidity difficulties among its participants.

DCC's procedures will allow participants to effect trades for clearance and settlement in the repo clearing system or in the options clearing system above their exposure limits only if DCC determines that the risk involved is below a defined *de minimis* amount. While this provision gives DCC some flexibility in determining whether to reject or accept a participant's trades, it does so in a limited and prudent manner. Furthermore, the unification of each participant's exposure limit for its options and repo transactions should allow DCC to improve its understanding of the overall risk each participant poses to DCC. In addition, the limitation on the types of margin that may be used as a credit for MPSE calculations should reduce the possibility that routine margin calls designed to reduce DCC's credit exposure inadvertently compound DCC's exposure. By enhancing DCC's risk management system, the proposal assists DCC in safeguarding securities and funds in its possession and control.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and particularly with Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–DCC–96–13) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13402 Filed 5–21–97; 8:45 am]

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[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38645; File No. SR–NASD–96–29; Amendment No. 4]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Allocation and Delegation of Authority and Responsibilities by the National Association of Securities Dealers, Inc., to NASD Regulation, Inc., and The Nasdaq Stock Market, Inc.

May 15, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 14, 1997, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') Amendment No. 4 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change as further amended by Amendment No. 4 from interested persons and is simultaneously granting accelerated approval to the proposed rule change for a period of six months.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to extend the effectiveness of: (1) Rule 0130 to the NASD's rules delegating to the subsidiaries of the NASD, NASD Regulation, Inc. (''NASDR'') and The Nasdaq Stock Market, Inc. (''Nasdaq''), the authority to act on behalf of the Association as set forth in a Plan of Allocation and Delegation adopted by the NASD Board of Governors and approved by the Commission pursuant to its authority under the Act; and (2) adopt a Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (''Delegation Plan'') setting forth the purpose, function, governance, procedures and responsibilities of the NASD, NASDR and Nasdaq, following the reorganization of the NASD.

Rule 0130 and the Delegation Plan originally were filed with the Commission in SR–NASD–96–16 and were simultaneously published for comment and approved by the Commission on a temporary basis for a period of 90 days.[2] Release 34–37107 contained the full text of Rule 0130 and the Delegation Plan with the exception of three changes thereto. On July 11, 1996, the Commission issued a release publishing for comment the three changes to the Delegation Plan and further approving Rule 0130 and the Delegation Plan as amended for a period of 120 days.[3] Release 34–37107 and

[1] The NASD originally filed the rule change on July 2, 1996. On July 8, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 amended the language of proposed new Subsections II.C.4. and III.C.3 of the Delegation Plan to clarify that it is proposed that the NASD Board of Governors have authority to determine to both call for review or not call for review a matter of the subsidiary Board during the 15-day period provided for consideration by the NASD Board.

On July 10, 1996, the NASD filed Amendment No. 2 to the proposed rule change. Amendment No. 2 requests temporary approval of the proposed rule change for a period of 120 days. *See* Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated July 10, 1996).

On November 12, 1996, the NASD filed Amendment No. 3 to the proposed rule change. Amendment No. 3 requested temporary approval of the proposed rule change for a period of six months. *See* Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated November 12, 1996). The Commission previously published notice of the proposed rule change and granted accelerated approval to the proposed rule change for periods of 120 days and six months (Securities Exchange Act Release No. 37425 (July 11, 1996), 61 FR 37518 (July 18, 1996) (''Release 34–37425'') and Securities Exchange Act Release No. 37957 (November 15, 1996), 61 FR 59267 (November 21, 1997) (''Release 34–37957'').

[2] Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) (''Release 34–37107'').

[3] Release 34–37425.

Release 34–37425 published the complete text of the rule change. On November 15, 1996, the Commission extended temporary approval of the instant proposed rule change for a six month period.[4]

The NASD hereby files this Amendment No. 4, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the Delegation Plan as amended for an additional period of six months.[5] During this interval, there will be no further amendments to the Delegation Plan, absent Commission approval of a corresponding Rule 19b–4 filing.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item V below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this Amendment No. 4 is to ensure continued effectiveness of the Delegation Plan while the Commission considers whether to grant permanent approval to the instant NASD rule filing.

Description of Delegation Plan

The Delegation Plan is organized in three principal parts, one for each of the three major entities that will constitute the reorganized NASD: the parent corporation, National Association of Securities Dealers, Inc.; the regulatory subsidiary, NASD Regulation, Inc.; and the stock market operating subsidiary, The Nasdaq Stock Market, Inc.[7] The Delegation Plan, the contents of which are self-explanatory, describes the purposes, functions, governance, procedures and responsibilities of each entity.

The first part of the Delegation Plan describes the parent corporation, National Association of Securities Dealers, Inc. The Delegation Plan sets forth the purpose and function of the NASD; the composition of the Board of Governors, including provisions relating to the qualifications for Governors, election procedures, creation of a National Nominating Committee,[8] term of office, vacancies and removal from office; the function, composition and reporting structure of the Audit Committee and the Office of Internal Review; the function and composition of the Management Composition Committee; and the Commission's access to and status of officers, directors, employees, books, records and premises of the subsidiaries.

The second part of the Delegation Plan describes the regulatory subsidiary, NASD Regulation, Inc. The Delegation Plan sets forth the delegation of authority to NASDR by the NASD; the purpose, function and authority of NASDR; the composition of and qualifications for members of the Board of Directors from 1997 forward, including provisions relating to election procedures; the function and composition of the National Business Conduct Committee; the Board's procedures for reviewing disciplinary actions, statutory disqualification decisions and proposed rule change recommendations; and the Board's procedures for initiating actions.

The third part of the Delegation Plan describes the stock market operating subsidiary, The Nasdaq Stock Market, Inc. The Delegation Plan sets forth the delegation of authority to Nasdaq; the purpose and function of Nasdaq; the composition of and qualifications for members of the Board of Directors, including, provisions relating to election procedures and the authority of the Board; the Board's procedures for reviewing listing/delisting decisions, and rule change recommendations; the Board's procedures for initiating actions; the functions and composition of the Quality of Markets Committee; and functions of the Stockwatch Department.

2. Statutory Basis for the Proposed Rule Change

The NASD believes that the proposed rule change as further amended by Amendment No. 4 is consistent with the provisions of Section 15A(b)(2) of the Act[9] in that the terms of the Delegation Plan will provide for the organization of the Association in a manner that will permit the Association, through its operating subsidiaries, to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by Association members and persons associated with members with the Act, the rules and regulations thereunder, the rules of the Association and the federal securities laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change as further amended by Amendment No. 4 will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received. However, in connection with the publication for member vote of proposed amendments to the By-Laws to implement the Delegation Plan in Notice to Members 95–101 (December 11, 1995), attached as Exhibit 2 to proposed rule change SR–NASD–96–02, the NASD received three comments which were attached as Exhibit 4 to that proposed rule change. The NASD's statement on the comments received with respect to Notice to

[4] Release 34–37957.

[5] The NASD also filed Amendment No. 5 to SR–NASD–96–20, requesting an extension of the Commission's temporary approval of the amended NASD By-Laws for a period of six months. The Commission is separately approving that rule change as further amended by Amendment No. 5. *See* Securities Exchange Act Release No. 38644 (May 15, 1997).

[6] The NASD filed SR–NASD–97–28, the Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. (''NASD'') to Proposed Changes in the By-Laws of the NASD, NASD Regulation, Inc., The Nasdaq Stock Market, Inc., the Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries, Membership Application Procedures, Disciplinary Proceedings, Other Proceedings, and Other Conforming Changes, which contains proposed amendments to the Delegation Plan. The comment period for this rule filing expires on June 6, 1997.

[7] The Delegation Plan does not discuss other wholly owned subsidiary corporations of the NASD, such as, the Securities Dealers Risk Purchasing Group, Inc. and Securities Dealers Insurance Co., Ltd. These and any other wholly owned subsidiaries of the NASD not described in the Delegation Plan do not perform any of the Association's regulatory functions or the operating functions related to the operation of The Nasdaq Stock Market. In addition, the Delegation Plan does not address the NASD's ownership role in corporations such as the National Securities Clearing Corporation or the Depository Trust Company.

[8] The National Nominating Committee is composed of at least six and not more than nine members equally balanced between Industry and Non-Industry Committee Members (including at least two Public Committee Members). Two members of the National Nominating Committee are selected by each of the Subsidiaries and the NASD, of which it is anticipated that at least three will be Non-Industry Members.

[9] 15 U.S.C. § 78o–3.

Members 95–101 is set forth in SR–NASD–96–02 and was published by the Commission in Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996). SR–NASD–96–02 proposed certain of the By-Law amendments issued for member vote in Notice to Members 95–101 (December 11, 1995) in order to permit the reorganization of its Board of Governors consistent with the Delegation Plan submitted in SR–NASD–96–16.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change as further amended by Amendment No. 4 prior to the 30th day after publication in the **Federal Register**.

IV. Discussion

The Commission finds that the proposed rule change as further amended by Amendment No. 4 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. The Commission believes that the proposed rule change will allow the NASD to carry out the purposes of the Act to comply with, and enforce compliance by its members and associated persons with, the provisions of the Act, the rules and regulations thereunder, and the rules of the NASD. Furthermore, the amendments are designed (with amendments to the NASD By-Laws simultaneously approved in SR–NASD–96–20, as set forth below) to assure a fair representation of the NASD's members, in the selection of its directors and administration of its affairs as well as comply with the public and non-industry participant requirements of the Act. It is envisioned that these rules and any subsequent changes that may be implemented from time-to-time will enable the NASD to better comply with the requirements of Section 15A(b)(2) in particular and the Act in general.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will enhance the NASD's ability to carry out its regulatory obligations under the Act. The Commission believes that the proposed rule change is intended to accomplish certain allocations and delegations of authority necessary to reorganize the NASD, and establish as separate subsidiaries the NASDR and Nasdaq in accordance with the September 1995 recommendations of The Select Committee on Structure and Governance in order to enable the NASD to meet its regulatory and business obligations. The Delegation Plan, which is part of this proposed rule change, sets forth the purpose, functions, governance, procedures, and responsibilities of the NASD, the NASDR and Nasdaq following the reorganization of the NASD. The NASD's Board of Governors, which has been reorganized to be consistent with the proposed rule change, has held meetings to carry out the business of the Association. The subsidiaries also have held meetings of the Board of Directors of NASDR and Nasdaq in order to carry out the business of the subsidiaries during the period in which the Delegation Plan has been effective.

The instant proposed rule change was previously published for comment and approved by the Commission on a temporary basis for periods of 120 days and six months.[10] The six month approval period is scheduled to expire by May 15, 1997. No comment letters concerning the instant proposed rule change were received by the Commission. The reorganization of the NASD Board of Governors is also reflected in rule changes to the NASD By-Laws submitted in rule filing SR–NASD–96–20, which also was previously granted temporary approval for six months.[11] The Commission is also extending its temporary approval of that proposed rule change.[12]

Accordingly, the Commission believes that accelerating the approval of the proposed rule change as further amended by Amendment No. 4 will benefit members and the public interest by fully implementing the reorganization of the NASD and its subsidiaries.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 12, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–29, as amended by Amendment No. 4, be, and hereby is, approved through November 15, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–13458 Filed 5–21–97; 8:45 am]

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[10] Release Nos. 34–37425 and 34–37957, respectively.

[11] Securities Exchange Act Release No. 37956 (November 15, 1996), 61 FR 59265 (November 21, 1996).

[12] *See* Securities Exchange Act Release No. 38644 (May 15, 1997).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38644; File No. SR–NASD–96–20, Amendment No. 5]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval To Proposed Rule Change by National Association of Securities Dealers, Inc. Relating To Changes in the Structure of the NASD Board of Governors

May 15, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 14, 1997, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') Amendment No. 5 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD.[1] The

[1] The NASD originally filed the rule change on May 28, 1996. On June 5, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 amended Article VI, Section 5 of the NASD By-Laws (''By-Laws'') to clarify that, in a contested election, the term of office of a candidate certified by the National Nominating Committee for inclusion on the ballot for the election of Governors pursuant to Article VI, Section 7(c) would be identical to the term of office of a candidate nominated by the National Nominating Committee pursuant to Article VI, Section 7(c). Amendment No. 1 also amended

Commission is publishing this notice to solicit comments on the proposed rule change as further amended by Amendment No. 5 from interested persons and is simultaneously granting accelerated approval to the proposed rule change for a period of six months.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In 1995, the NASD Board of Governors (''Board'') appointed The Select Committee on Structure and Governance (''Select Committee'') to examine the corporate structure, governance, and functions of the NASD and to recommend changes and improvements to enable the NASD to meet its regulatory and business obligations. In September 1995, the Select Committee recommended, among other things, that the NASD establish two distinct subsidiaries; one to perform the regulatory functions of the NASD and the other to run The Nasdaq Stock Market, Inc. (''Nasdaq''). The Select Committee recommended that each subsidiary have an independent Board of Directors with at least 50% public representation and that the NASD remain as parent corporation overseeing the operations of both subsidiaries. The Select Committee recommended that the NASD Board of Governors be composed of a majority of public directors.

In January 1996, the NASD created a new subsidiary, NASD Regulation, Inc. (''NASD Regulation'') to provide regulation and member and constituent services, with the NASD retaining responsibility for general oversight over the effectiveness of the self-regulatory and business operations of the NASD and its major subsidiaries, Nasdaq and NASD Regulation, and final policymaking authority for the association as a whole. The NASD also adopted Select Committee proposals to restructure and reduce the size of the NASD Board and to implement policies to ensure a balance of non-industry and industry representation on the Nasdaq and NASD Regulation Boards.

On April 11, 1996, the Commission granted temporary approval for a period of 90 days to: (i) amendments to Article VII of the NASD By-Laws to create a national nominating committee to nominate persons to serve on the Board of Governors and reconstitute the Board as a majority non-industry Board; [2] (ii) NASD Rule 130 providing for the delegation of authority to act on behalf of the NASD to NASD Regulation and Nasdaq pursuant to the ''Plan of Allocation and Delegation of Functions by NASD to Subsidiaries'' (''Delegation Plan''); and (iii) the Delegation Plan.[3] The Delegation Plan sets forth certain purposes, functions and governance procedures of the three corporations working together.

On June 11, 1996, the Commission approved the instant proposed rule change for a period of 120 days. The rule change amended the By-Laws to conform them to the Delegation Plan. The rule change provided for the creation of a national nominating committee to identify and nominate for election industry and non-industry persons to serve on the Board; deleted references to the District and local administration, because responsibility for the local administration of regulatory affairs under the Delegation Plan has been assigned to NASD Regulation; conformed terms and rule citations to those used in the reorganized *NASD Manual* and made miscellaneous clarifying corrections to the By-Laws; and replaced all references to the NASD ''Certificate of Incorporation'' with references to the ''Restated Certificate of Incorporation'' to reflect that the Certificate of Incorporation has been amended to be consistent with the changes previously adopted and proposed herein to the By-Laws. On November 15, 1996, the Commission extended temporary approval of the instant proposed rule change for an additional six months.[4]

The NASD hereby files this Amendment No. 5, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the amendments to the By-Laws for a period for six months.[5] During this interval, there will be no further amendments to the By-Laws, absent Commission approval of a corresponding Rule 19b–4 filing.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item V below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of Amendment No. 5 is to ensure continued effectiveness of the amended NASD By-Laws while the Commission considers whether to grant permanent approval to the instant NASD rule filing. Amendment No. 5 is intended to ensure that the NASD continues to possess the requisite

Article VI, Section 7(a) of the By-Laws to clarify that any person elected to the Board of Governors must be nominated or certified by the National Nominating Committee. *See* Letter from Suzanne E. Rothwell, Associate General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated June 4, 1996).

On July 2, 1996, the NASD filed Amendment No. 2 to the proposed rule change. Amendment No. 2 provided the final report of the vote of the NASD membership with respect to the proposed rule change. 2,227 valid ballots were received from NASD members. 2,101 voted to approve the proposed rule change, 117 voted to disapprove the proposed rule change and 9 did not vote.

On July 10, 1996, the NASD filed Amendment No. 3 to the proposed rule change. Amendment No. 3 requested temporary approval of the proposed rule change for a period of 120 days. *See* Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated July 10, 1996).

On November 12, 1996, the NASD filed Amendment No. 4 to the proposed rule change. Amendment No. 4 requested temporary approval of the proposed rule change for a period of six months. *See* Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated November 12, 1996).

The Commission previously published notice of the proposed rule change (Securities Exchange Release No. 37282 (June 6, 1996), 61 FR 29777 (June 12, 1996)) and granted accelerated approval to the proposed rule change for periods of 120 days and six months (Securities Exchange Act Release No. 37424 (July 11, 1996), 61 FR 37515 (July 18, 1996) and Securities Exchange Act Release No. 37956 (November 15, 1996), 61 FR 59265 (November 21, 1996), respectively).

[2] Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996) (''Release 34–37106'').

[3] Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) (''Release 34–37107'').

[4] The Commission separately approved SR–NASD–96–29, amending the Delegation Plan, for periods of 120 days and six months. *See* Securities Exchange Act Release No. 37425 (July 11, 1996), 61 FR 37518 (July 18, 1996) and Securities Exchange Act Release No. 37957 (November 15, 1996), 61 FR 59267 (November 21, 1996), respectively.

[5] The NASD also filed Amendment No. 4 to SR–NASD–96–29, requesting an extension of the Commission's temporary approval of the Delegation Plan for a period of six months. The Commission is separately approving that rule change as further amended by Amendment No. 4. *See* Securities Exchange Act Release No. 38645, May 15, 1997).

[6] The NASD filed SR–NASD–97–28, to propose changes in the By-Laws of the NASD, NASD Regulation, Inc., The Nasdaq Stock Market, Inc., the Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries, Membership Application Procedures, Disciplinary Proceedings, Other Proceedings, and Other Conforming Changes; the filing contains proposed amendments to the NASD By-Laws. The comment period for this rule filing expires on June 6, 1997. *See* Securities Exchange Act Release No. 34–38545 (April 24, 1997, 62 FR 25226 (May 8, 1997).

corporate authority to continue the restructuring necessary to implement the principles articulated in the report of the Select Committee.

2. Statutory Basis

The NASD believes that the proposed rule change as further amended by Amendment No. 5 is consistent with the provisions of Sections 15A(b) (2), (4), and (6) of the Act[7] in that the restructured organization will: (1) provide for the organization of the Association in a manner that will permit the Association, through its operating subsidiaries, to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by Association members and persons associated with members with the Act, the rules and regulations thereunder, the rules of the Association and the federal securities laws; (2) provide for the fair representation of members, issuers and investors on the Board of Governors and in the administration of the NASD's affairs; and (3) enhance the NASD's ability to protect investors and the public interest in furtherance of the purposes of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received. However, in connection with the publication of certain parts of the proposed rule change for member vote in Notice to Members 95–101, attached as Exhibit 2 to rule filing SR–NASD–96–02, the NASD received three comments, which were attached as Exhibit 4 to SR–NASD–96–02. The NASD's statement on the comments received with respect to Notice to Members 95–101 is set forth in rule filing SR–NASD–96–02 and was published by the Commission in Release 34–37106.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the effectiveness of the amended By-Laws. The current authorization is scheduled to expire by May 15, 1997. Hence it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the self-regulatory organization functions currently assumed by NASD Regulation and Nasdaq pending Commission action on the proposed extension.

IV. Discussion

The Commission finds that the proposed rule change as further amended by Amendment No. 5 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. The Commission believes that the proposed rule change will allow the NASD to carry out the purposes of the Act to comply with, and enforce compliance by its members and associated persons, with the provisions of the Act, the rules and regulations thereunder, and the rules of the NASD. Furthermore, the amendments are designed (with amendments to the NASD By-Laws simultaneously approved in SR–NASD–96–29 as set forth below) to assure a fair representation of the NASD's members, in the selection of its directors and administration of its affairs as well as comply with the public and non-industry participant requirements of the Act. It is envisioned that these rules and any subsequent changes that may be implemented from time-to-time will enable the NASD to better comply with the requirements of Section 15A(b)(2) in particular and the Act in general.

The instant proposed rule change was previously published for comment and approved by the Commission on a temporary basis for periods of 120 days and six months in Releases 34–37424 and 34–37956, respectively. The six month approval period is scheduled to expire by May 15, 1997. No comment letters concerning the instant proposed rule change were received by the Commission. The reorganization of the NASD Board of Governors is also reflected in rule changes to the NASD Delegation Plan submitted in rule filing SR–NASD–96–29, which also was previously granted temporary approval for periods of 120 days and six months.[8] The Commission is also extending its temporary approval of that proposed rule change.[9]

The Commission finds good cause for approving the instant proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will enhance the NASD's ability to carry out its regulatory obligations under the Act. The Commission believes that the proposed rule change is intended to accomplish certain allocations and delegations of authority necessary to reorganize the NASD, and establish as separate subsidiaries NASD Regulation and Nasdaq in accordance with the September 1995 recommendations of The Select Committee on Structure and Governance in order to enable the NASD to meet its regulatory and business obligations.

Accordingly, the Commission believes that accelerating the approval of the proposed rule change as further amended by Amendment No. 5 will benefit members and the public interest by fully implementing the reorganization of the NASD and its subsidiaries.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–96–20, Amendment No. 5 and should be submitted by June 12, 1997.

VI. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that the proposed rule change is consistent with the provisions of Sections 15A(b)(2), (4),

[7] 15 U.S.C. § 78o–3.

[8] *See* Securities Exchange Act Release No. 37425 (July 11, 1996), 61 FR 37518 (July 18, 1996) and Securities Exchange Act Release No. 37957 (November 15, 1996), 61 FR 59267 (November 21, 1996), respectively.

[9] Securities Exchange Act Release No. 38645 (May 15, 1997).

and (6) of the Act [10] in that the restructured organization will: (1) Provide for the organization of the Association in a manner that will permit the Association, through its operating subsidiaries, to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by NASD members and persons associated with members with the Act, the rules and regulations thereunder, the rules of the Association and the federal securities laws; (2) provide for the fair representation of members, issuers and investors on the Board of Governors and in the administration of the NASD's affairs; and (3) enhance the NASD's ability to protect investors and the public interest in furtherance of the purposes of the Act.

The NASD has requested that the Commission approve the proposed rule change on or before May 15, 1997, which is prior to the 30th day following publication of notice of the filing of the proposed rule change in the **Federal Register**, in order to permit the uninterrupted authorization of those corporate actions necessary to effectuate the Delegation Plan.

Pursuant to Section 19(b)(2) of the Act,[11] the Commission finds good cause for approving the proposed rule change, as further amended by Amendment No. 5, prior to the 30th day after publication in the **Federal Register**. The proposed rule change will permit the NASD to continue to carry out the functions and organize itself in the manner contemplated by the Delegation Plan, which is intended to enable the NASD to meet its regulatory and business obligations. Because the Commission believes that the proposed rule change facilitates the ability of the NASD to manage its affairs in a manner that enhances its ability to carry out the purposes of the Act and enforce compliance by NASD members and their associated persons with the provisions of the Act, the Commission believes that the rule filing should be approved without delay, for a six-month period.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that SR–NASD–96–20, as further amended by Amendment No. 5, be, and hereby is, approved effective through November 15, 1997.

[10] 15 U.S.C. § 78*o*–3.

[11] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 97–13461 Filed 5–21–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38639; File No. SR–NSCC–97–3]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Regarding Exemption Processing

May 14, 1997.

On March 7, 1997, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NSCC–97–3) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on April 9, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change modifies NSCC's procedures regarding exemption processing in NSCC's Continuous Net Settlement (''CNS'') System.[3] A short position in CNS represents the quantity of securities owed to NSCC by the member. To satisfy short positions for purposes of settlement, securities are delivered from the member's account at The Depository Trust Company (''DTC'') to NSCC's account at DTC.

As a part of the NSCC's CNS accounting operation, members may control the delivery of their securities to NSCC through the use of exemptions.[4] Through exemption limitations, a member may elect to deliver to NSCC all, part, or none of any short position. NSCC presently requires members to input exemption instructions on a daily basis and permits but does not require members to input standing instructions. Pursuant to this rule change, members are now required to input standing exemption instructions but need not input exemption instructions daily. If a daily instruction is not submitted, not received, or is received but cannot be processed by NSCC, the member's standing exemption instructions will be used.

II. Discussion

Section 17A(b)(3)(F)[3] of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that NSCC's rule change is consistent with NSCC's obligations under the Act because it makes the settlement process more efficient. Under the new procedures, NSCC participants will submit standing exemption instructions instead of daily instructions. Participants will then only need to submit exemption instructions when their delivery needs differ from their standing instructions. Thus, the proposal should reduce the number of instructions a participant needs to submit in order to settle transactions. Furthermore, the proposal will allow settlement to take place even if a member is unable to submit its exemption instructions. Thus, the proposal helps to ensure that transactions are settled promptly and accurately.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–97–3) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13401 Filed 5–21–97; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38453 (March 28, 1997), 62 FR 17274.

[3] CNS is an on-going accounting system that nets a member's securities obligations on a daily basis to produce a short or long position in each issue and an overall settlement debit or credit.

[4] Exemptions assist members in complying with the segregation provisions of Rule 15c3–3 of the Act and in meeting other delivery needs.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38641; File No. SR–NYSE–97–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of the Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Establishment of a 4:02 p.m. Closing Time for Equity and Narrow-Based Index Options Trading

May 14, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on January 29, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing: (1) to change the time pursuant to which a member organization may tender an index stock group option exercise notice to five minutes after the close of trading; and (2) to change the closing time for the trading of equity options and industry index stock group options on the Exchange from 4:10 p.m. to 4:02 p.m. The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(a) Exercise Notice Cut-Off Time

Supplementary Material .10 of Exchange Rule 780 (Exercise of Option Contracts) provides that in connection with the exercise of industry index stock group options:

(i) A member organization may not tender an exercise notice unless a memorandum has been prepared by no later than 4:15 p.m.;

(ii) In the case of exercise of 25 or more contracts, an exercise advice must be delivered to the Exchange by 4:15 p.m.; and

(iii) Member organizations must accept exercise instructions until 4:15 p.m.

Because the changes to Exchange Rule 792 (Days and Hours for Options Trading) that the Exchange proposes would change the closing time for trading in industry index stock group options from 4:10 p.m. to 4:02 p.m., the Exchange proposes to reduce the three 4:15 deadlines set forth above by a commensurate amount (that is, from 4:15 p.m. to 4:07 p.m.). The Exchange feels that it is appropriate to make generic the three deadlines (that is, the Exchange prefers ''five minutes after the close of trading'' to ''4:07 p.m.'') in light of the fact that trading in the underlying equities need not always close at 4:00 p.m., and similarly, trading in industry index stock group options need not always close at 4:02 p.m. For instance, a day's trading may trigger a ''circuit breaker'' that ends the trading day early or the Exchange may exercise its discretion to close trading early (as it sometimes does on the eve of holidays).

(b) Equity Option and Industry Index Options Closing Time

Paragraph (a) of Exchange Rule 792 specifies that members may effect equity options transactions on the Exchange Floor on each trading day until ten minutes after the close of equities trading on the Floor and may effect transactions on the Exchange Floor in options on industry or broad index stock groups until fifteen minutes after that close of equities trading. (Equities trading currently closes at 4:00 p.m.)

The Exchange proposes to amend the closing time for both equities option trading and trading in industry index stock group options to two minutes after the close of equities trading. (The Exchange does not propose to amend the closing time for broad index stock group options at this time.)

The original purpose for the ten-minute differential for equities options and the fifteen minute differential for industry index stock group options was to allow options traders an appropriate opportunity in which to respond to equity trading that might take place just before the close. That opportunity to respond is important because pre-closing equity trades may result in post-closing reports of trades in an equity security. Ten minutes (in the case of equities options) and fifteen minutes (in the case of industry index stock group options) were thought to be necessary because it sometimes took several minutes after the close of equity trading for the tape to display some of those latet trades. However, technological improvements in the time it takes to process transactions and to report them over the tape make it no longer necessary to maintain the 10-minute differential for equity options and the 15-minute differential for industry index stock group options.

Shortening the differential to two minutes moves the closing time for options trading much closer to the closing time for equity trading, while maintaining an appropriate opportunity for options traders to respond to last-minute trading on the equity floor.

2. Statutory Basis

The proposed rule changes further the objectives of section 6(b)(5) of the Act, in that they are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange states that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Section 6(b)(5).[3] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market, and in general, to further investor protection and the public interest.

The Commission believes that it is reasonable for the Exchange to amend its rules to close trading in equity and narrow-based index options at 4:02 p.m., versus the existing 4:10 p.m. close. Changing the closing time for these options to 4:02 p.m. preserves the Exchange's [4] stated need to continue trading options for some period of time after the close of trading in the underlying securities. The Exchange has stated that this two minute extension from the close of the stock markets will allow options traders to respond to late reports of closing prices over the consolidated tape, thereby bringing options quotes into line with the closing price of the underlying security. Due to improvements in the processing and reporting of transactions, the Exchange believes that two minutes of options trading after the underlying equities close is sufficient to bring options quotes into line with the closing prices of the underlying securities.

As discussed in similar rule filings submitted to the Commission, the CBOE and the American Stock Exchange, Inc. (''Amex'') state that a number of issuers have adopted the practice of disseminating important corporate news after the close of trading on the primary equity exchange in order to minimize the short-term disruptive effect of the news on the market price of the stock by allowing investors the opportunity to digest the significance of the news after the markets have closed.[5] These announcements, if made while options markets are still trading, impact narrow-based index options, as well as equity options, because a significant news announcement on one component of a narrow-based index may have substantial impact on that index. As a result, the exchanges are often deluged with option orders as a result of such significant news announcements after 4:00 p.m. The exchanges state that these orders may have a disruptive effect on the options market at a time when the exchanges are attempting to close in a fair and orderly fashion.

Accordingly, the Commission finds that a closing time of 4:02 p.m. for equity and narrow-based index options is a reasonable means to address the Exchange's desire to balance the need for some extended trading period with the need to prevent negative impact from issuers' major news announcements made while only the options markets remain open.

The Commission also finds that it is reasonable for the Exchange to amend its rules to remove the reference to the closing time and instead to specify that index stock group option exercise notices must be given five minutes after the close of trading.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Commission notes that it is approving this proposal on the same date that it is approving nearly identical rule change proposals submitted by the Amex, CBOE, and Pacific Exchange, Inc. (''PCX''). These rule filings have been published in the **Federal Register** [6] and were subject to a full notice and comment period. No comments were received on the proposals. Accordingly, the Commission believes, consistent with Section 6(b)(5) of the Act, that good cause exists to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–97–02, and should be submitted by June 12, 1997.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–97–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–13457 Filed 5–21–97; 8:45 am]

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[3] 15 U.S.C. 78f(b)(5).

[4] The Commission notes that the NYSE has recently ceased all equity and index options trading on its floor, transferring its options business to the Chicago Board Options Exchange, Inc. (''CBOE''). Release No. 34–38542 (April 23, 1997) (Order approving NYSE–97–05). Nevertheless, the Commission believes it is appropriate to approve the current rule change, particularly since NYSE may reenter the options business at a later date.

[5] *See* SR–CBOE–96–71 and SR–AMEX–96–45.

[6] *See* SR–AMEX–96–45, Release No. 34–38123 (January 6, 1997), 62 FR 1786 (January 13, 1997); SR–CBOE–96–71, Release No. 34–37988 (November 26, 1996), 61 FR 64405 (December 4, 1996); and SR–PSE–96–41, Release No. 34–37920 (November 4, 1996), 61 FR 58434 (November 14, 1996).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38649; File No. SR–PSE–96–35]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the Pacific Stock Exchange, Incorporated Relating to Its Rules on Executions of ''Odd Lot'' Equity Orders

May 16, 1997.

I. Introduction

On September 25, 1996, the Pacific Stock Exchange, Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to its rules on executions of odd lot equity orders. On December 17, 1996, the PSE submitted an amendment (''Amendment No. 1'') to

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published in the **Federal Register** on December 24, 1996.[4] No comments were received on the proposal. On May 15, 1997 the PSE submitted a second amendment (''Amendment No. 2'') to the proposed rule change.[5] This order approves the proposal. Also, Amendment No. 2 is approved on an accelerated basis.

II. Description of the Proposal

The Exchange proposed this rule change in order to provide better service to customers and to be competitive with other exchanges.[6] The Exchange proposed to modify Rule 5.34(b) (''Odd Lot Executions'') to provide as follows:

First, with regard to market orders, the PSE proposed that an odd lot market order shall be filled at either (a) the price being disseminated on the Intermarket Trading System (''ITS'') best bid or offer at the time the odd lot dealer receives the order, provided certain conditions are met;[7] or (b) the price of the next round lot sale on the primary market or a price deemed appropriate under prevailing market conditions if one or more of the conditions specified in (a) does not apply. The Exchange is making this change in order to assure that the application of the rule in unusual circumstances is fair, reasonable, and consistent with the rules relating to the ITS. The current rule states that such orders shall be filled at the price of the first round lot transaction which takes place on the primary market, plus if a buy order, or minus if a sell order, an odd lot differential, if any.

Second, with regard to limit orders, the PSE proposed that an odd lot limit order shall be filled at, or better than, the price of the next[8] regular way round lot transaction that is at, or better than, the limit order's price printed on the consolidated tape from the security's primary market.[9] The PSE further proposed that such odd lot orders shall be allowed to establish precedence without regard to priority of existing round lot bids or offers at that price. The current rule states that such orders shall be filled at the price of the first round lot transaction which takes place on the primary market, which in the case of a buy order is below the specified limit by the amount of the trading differential, or by a greater amount; or which in the case of a sell order is above the specified limit by the amount of the trading differential, or by a greater amount; plus if a buy order, or minus if a sell order, an odd lot differential, if any.

Third, with regard to stop orders, the PSE proposed that an odd lot stop order to buy shall become a market order when a regular way round lot transaction takes place at or above the price of the stop order on the primary market.[10] The PSE further proposed that an odd lot stop order to sell shall become a market order when a regular way round lot transaction takes place at or below the price of the stop order on the primary market.[11] The current rule states that an odd lot stop order becomes a market order when a round lot transaction takes place on the primary market, which in the case of a buy order is at or above the stop price; or which in the case of a sell order is at or below the stop price; and it further states, that the order shall then be filled at the price of the next round lot transaction which takes place on the primary market, plus if a buy order, or minus if a sell order, an odd lot differential, if any.

Fourth, the PSE proposed that it shall be inconsistent with the purpose and intent of the Rule to engage in the following actions: (a) the unbundling of round lots for the purpose of entering odd lot limit orders in comparable amounts; (b) the failure to aggregate odd lot orders into round lots when such orders are for the same account or for various accounts in which there is a common monetary interest; and (c) the entry of both buy and sell odd lot limit orders in the same stock before one of the orders is executed for the purpose of capturing the ''spread'' in the stock. The proposal also states that, in general, the Exchange views order entry practices that are intended to circumvent the round lot auction market as abuses of the intent and purpose of the odd lot system, and such practices shall be considered violations of these rules.

Finally, the PSE proposed to remove several provisions from the rules relating to odd lot executions that no longer apply. First, the Exchange proposed to eliminate all provisions in Rule 5.34(b) on odd lot differentials. Second, the proposal modified Rule 5.34(b) to eliminate the distinction between ''PMP stocks'' and ''non-PMP stocks.''[12]

The Exchange stated its belief that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act, in particular, in that it is designed to facilitate transactions in securities and to promote just and equitable principles of trade.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5)[13] of the Act in that it is designed to facilitate transactions in securities and to promote just and equitable principles of trade.

The Commission believes that the Exchange's proposed pricing procedures for standard odd lot market orders should facilitate the execution and accurate reporting of odd lot transactions, and should also assist in the prompt and accurate clearance and settlement of such transactions. Because the orders, under most circumstances, will be priced off a current market quote instead of a subsequent transaction, investors should receive a timely execution of their orders. Moreover, the Commission believes that the revised procedures, which provide for the pricing of standard odd lot market orders at best bid or offer reflected in the consolidated quote system, rather

[3] Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE to Janet Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, dated December 17, 1996. In Amendment No. 1, the PSE clarified the purpose of the rule change and made technical corrections to the text of the rule.

[4] Securities Exchange Act Release No. 38087 (December 24, 1997), 62 FR 782 (January 6, 1997).

[5] Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE to Janet Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, dated May 14, 1997. In Amendment No. 2, the PSE modified the provision of the proposal on executions of odd-lot market orders (see discussion below) and made a minor technical correction to the proposal. The PSE also requested that the Commission approve Amendment No. 2 on an accelerated basis.

[6] *See* Amendment No. 1, *supra* note 3.

[7] The conditions are that: the stock is included in ITS in that market center; the size of the quote is greater than 100 shares; the bid or offer is no more than one-quarter dollar away from the bid or offer disseminated by the primary market; the quote conforms to PSE Rule 5.3(b) regarding trading differentials; the quote does not result in a locked market; the market center is not experiencing operational problems with respect to the dissemination of quotes; and that the bid or offer is firm. *See* PSE Rule 5.34(b)(1) (A)–(G). These conditions are essentially the same as those provided in New York Stock Exchange Rule 124, Odd Lot Orders, Supplementary Material .60.

[8] *See* Amendment No. 2, *supra* note 5.

[9] *See* Amendment No. 1, *supra* note 3.

[10] *Id.*

[11] *Id.*

[12] ''PMP'' stocks are those for which Exchange specialists provide primary market protection. Today, such protection applies to all stocks that may be executed on P/COAST, the Exchange's automatic execution system for equity securities.

[13] In approving the proposed rule change, the Commission has considered the proposed rule changes' impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

than the price of the first round lot transaction in the primary market, will result in orders which should receive execution at prices which more accurately reflect market conditions than would otherwise be the case under the former procedures.

The PSE also has proposed an alternative method of pricing odd lot market orders in the event that the condition provided for in the proposed rule do not apply.[14] In such an event, an odd lot market order will be executed at the price of the next round lot sale on the primary market or will be executed by the odd lot dealer at a price deemed appropriate under prevailing market conditions. Using this method, the PSE can continue to provide procedures which will facilitate the execution of odd lot orders. The Commission recognizes that it is difficult to develop a method of pricing odd lot orders that under all market conditions would reflect appropriately the current market price. The Commission finds that it is reasonable for the PSE to have determined that use of the next sale price is appropriate under the several enumerated circumstances.

The Commission believes that the proposal with regard to odd lot limit orders also represents an improvement in the execution of such orders for investors. Allowing such limit orders to establish precedence without regard to priority of existing round lot bids or offers at that price will afford odd lot limit orders highly efficient and price superior execution services.

With respect to stop orders, the Commission finds that the proposal will provide improve execution for investors. Once a stop order becomes a market order under the terms of the amended rule, it will be treated in the same manner as a standard odd lot market order under the amended rule. Therefore, rather than receiving an execution at the price of the next round lot transaction which takes place on the primary market, as under the rule prior to amendment, investors will receive execution at the best bid or offer reflected in the consolidated quote system.

The Commission finds appropriate the proposal's explicit enumeration of those activities that shall be inconsistent with the intent of the rule, such as the unbundling of round lot orders for the purpose of entering odd lot limit orders in comparable amounts; the failure to aggregate odd lot orders into round lots when such orders are for the same account or for various accounts in which there is a common monetary interest; and the entry of both buy and sell odd lot limit orders in the same stock before one of the orders is executed for the purpose of capturing the ''spread'' in the stock. The Commission finds reasonable the Exchange's statement that, in general, order entry practices that are intended to circumvent the round lot auction market will be viewed as abuses of the intent and purpose of the odd lot system and such practices shall be considered violations of these rules.

The Commission believes that the proposal's provision removing discussion of odd lot differentials is a technical correction that is consistent with the Exchange's previous elimination of odd-lot differentials.[15] The Commission also finds appropriate the elimination of the distinction between ''PMP stocks'' and ''non-PMP stocks'' in light of the fact that all stocks that may be executed on P/COAST, the exchange's automatic execution system, currently receive such primary market protection.

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the publication of notice thereof in the **Federal Register**. Amendment No. 2 creates an alternate pricing mechanism that strengthens the proposal. Accordingly, the Commission believes there is good cause, consistent with Section 6(b)(5) and 19(b)(2) of the Act, to approve Amendment No. 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–35 and should be submitted by June 12, 1997.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–PSE–96–35), and amendments thereto, be and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Dos. 97–13456 Filed 5–21–97; 8:45 am]

BILLING CODE 8010–01–M

[14] *Supra* note 7.

[15] *See* PSE Rule 5.4.

[16] 15 U.S.C. § 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38642; File No. SR–PSE–96–41]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Inc. Establishing a 1:02 p.m. Closing Time for Equity Options Trading

May 14, 1997.

I. Introduction

On October 25, 1996, the Pacific Stock Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2]

Notice of the substance of the proposed rule change was provided by issuance of a release [3] and by publication in the **Federal Register**.[4] No comments were received. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Rule 4.2, Commentary .01 to change the 1:10 p.m. closing time for equity options to 1:02 p.m.[5] Currently, the ten minute period for trading equity options after the close of the underlying securities allows options traders to respond to late reports of closing prices over the consolidated tape. The proposed change will result in the close of trading in

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 37920 (November 4, 1996).

[4] 61 FR 58434 (November 14, 1996).

[5] All time references are in Pacific Time.

equity options at 1:02 p.m. instead of the existing close of 1:10 p.m.

The Exchange also proposes to amend Rule 6.64, Commentary .01(b), regarding transactions which may be effected in a class of options after the close, to conform to the change to a 1:02 p.m. close. Finally, the Exchange proposes to amend Rule 7.15, which specifies a cut-off time of 1:20 p.m. or a time designated to be five minutes after the close for preparing or submitting either a memorandum to exercise or an ''exercise advice'' for the exercise of index option contracts. The Exchange proposes to eliminate the references to 1:20 p.m. so that under amended Rule 7.15 such memoranda and advices will have to be submitted no later than five minutes after the close of index option trading.[6]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Section 6(b)(5).[7] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market, and in general, to further investor protection and the public interest.

The Commission believes that it is reasonable for the Exchange to amend its rules to close trading in equity options at 1:02 p.m., versus the existing 1:10 p.m. close. Changing the closing time for these options to 1:02 p.m. preserves the Exchange's stated need to continue trading options for some period of time after the close of trading in the underlying securities. The Exchange has stated that this two minute extension from the close of the stock markets will allow options traders to respond to late reports of closing prices over the consolidated tape, thereby bringing options quotes into line with the closing price of the underlying security. Due to improvements in the processing and reporting of transactions, the Exchange believes that two minutes of options trading after the underlying equities close is sufficient to bring options quotes into line with the closing prices of the underlying securities.

As discussed in similar rule filings submitted to the Commission, the Chicago Board Options Exchange, Inc. (''CBOE'') and the American Stock Exchange, Inc. (''Amex'') state that a number of issuers have adopted the practice of disseminating important corporate news after the close of trading on the primary equity exchange in order to minimize the short-term disruptive effect of the news on the market price of the stock by allowing investors the opportunity to digest the significance of the news after the markets have closed.[8] These announcements, if made while options markets are still trading, impact narrow-based index options, as well as equity options, because a significant news announcement on one component of a narrow-based index may have substantial impact on that index. As a result, the exchanges are often deluged with option orders as a result of such significant news announcements after 3:00 p.m. The exchanges state that these orders may have a disruptive effect on the options market at a time when the exchanges are attempting to close in a fair and orderly fashion.

Accordingly, the Commission finds that a closing time of 1:02 p.m. for equity options is a reasonable means to address the Exchange's desire to balance the need for some extended trading period with the need to prevent negative impact from issuers' major news announcements made while only the options markets remain open.

The Commission also finds that it is reasonable for the Exchange to amend Rule 7.15 to remove the reference to the closing time, and instead to specify that index option stock contract exercise notices must be given five minutes after the close of trading. Finally, the Commission finds it is reasonable for the Exchange to amend Rules 6.64, Commentary .01(b) and 7.15 to conform to the change to a 1:02 p.m. close.

It is contemplated that the Exchange will implement this rule change on or about June 23, 1997.[9]

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PSE–96–41) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

[6] The Exchange is not proposing to change the related rule on equity options, Rule 6.24, which provides for an exercise cut-off time of 2:30 p.m.

[7] 15 U.S.C. § 78f(b)(5).

[8] *See* SR–CBOE–96–71 and SR–AMEX–96–45.

[9] Phone conversation between Michael Pearson, Exchange and Janice Mitnick, Commission, May 14, 1997.

[10] 15 U.S.C. § 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[FR Doc. 97–13459 Filed 5–21–97; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Extension of Clearance

The form described below has been modified and submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Form 22

Title: Claim Documentation Form—Conscientious Objector.

Purpose: Is used to document a claim for classification as a conscientious objector.

Respondents: Registrants who claim to be conscientious objectors.

Frequency: One-time.

Burden: The reporting burden is one hour per individual.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, Arlington, Virginia, 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of publication of this notice to the Selective Service System, Reports Clearance Officer, Arlington, Virginia, 22209–2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, D.C. 20435.

Dated: May 14, 1997.

Gil Coronado,

Director.

[FR Doc. 97–13474 Filed 5–21–97; 8:45 am]

BILLING CODE 8015–01–M

SELECTIVE SERVICE SYSTEM

Privacy Act of 1974; Computer Matching Between the Selective Service System and the Department of Education

AGENCY: Selective Service System.

ACTION: Notice.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–

503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, the following information is provided:

1. *Name of participating agencies.* The Selective Service System (SSS) and the Department of Education (ED).

2. *Purpose of the match.* The purpose of this matching program is to ensure that the requirements of section 12(f) of the Military Selective Service Act (50 U.S.C. App. 462(f)) are met.

3. *Authority for conducting the matching program.* Computerized access to the Selective Service Registrant Registration Records (SSS 10) enables the Department of Education to confirm the registration status of applicants for assistance under Title IV of the Higher Education Act of 1965 (HEA), as amended (20 U.S.C. 1070 *et seq.*). Section 12(f) of the Military Selective Service Act, as amended (50 U.S.C. App. 462(f)), denies eligibility for any form of assistance or benefit under Title IV of the HEA to any person required to present himself and submit to registration under section 3 of the Military Selective Service Act who fails to do so in accordance with that section and any rules and regulations issued under that section. In addition, the Military Selective Service Act and section 484(n) of the HEA which allows the data match to fulfill the statement requirement specifies that any person required to present himself and submit to registration under section 3 of the Military Selective Service Act file a statement that he is in compliance with the Military Selective Service Act. Furthermore, section 12(f)(3) of the Military Selective Service Act authorizes the Secretary of Education, in agreement with the Director of the Selective Service System, to prescribe methods for verifying the statements of compliance filed by students.

Section 484(n) of the Higher Education Act of 1965, as amended (20 U.S.C. 1091(n)), requires the Secretary of Education to conduct data base matches with the Selective Service System, using common demographic data elements, to enforce the Selective Service registration provisions of the Military Selective Service Act (50 App. U.S.C. 462(f)), and further states that appropriate confirmation of a person's registration shall fulfill the requirement to file a separate statement of compliance.

4. *Categories of records and individuals covered.* (1) Federal Student Aid Application File (18–40–0014). Individuals covered are men born after December 31, 1959, but at least 18 years old by June 30 of the applicable award year. (2) Selective Service Registration Records (SSS 10).

5. *Inclusive dates of the matching program.* Commence on July 1, 1997 or 40 days after copies of the agreement are transmitted simultaneously to the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Management and Budget, whichever is later, and remain in effect for eighteen months unless earlier terminated or modified by agreement of the parties.

6. *Address for receipt of public comments or inquiries.* Justo Gonzalez, Jr., COL EN, Director for Operations, 1515 Wilson Boulevard, Arlington, VA 22209–2425.

Dated: May 14, 1997.

Gil Coronado,

Director.

[FR Doc. 97–13475 Filed 5–21–97; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF STATE

[Public Notice No. 2543]

Determination and Certification Under Section 40A of the Arms Export Control Act

Pursuant to Section 40A of the Arms Export Control Act as added by the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) (22 U.S.C. 2771 et seq.) (hereafter ''the Act'') and Executive Order 11958, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with United States antiterrorism efforts: Afghanistan; Cuba; Iran; Iraq; Libya; North Korea; Sudan; and Syria.

This determination and certification shall be transmitted to the Congress in accordance with Section 40A of the Act and published in the **Federal Register**.

Dated: May 9, 1997.

Strobe Talbott,

Acting Secretary of State.

[FR Doc. 97–13382 Filed 5–21–97; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF STATE

[Public Notice No. 2549]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea Working Group on Radiocommunications and Search and Rescue; Notice of Meetings

The Working Group on Radiocommunications and Search and Rescue of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 a.m. on Wednesday, July 23, September 24, October 15, December 10, 1997, February 11, and March 18, 1998. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street, S.W., Washington, DC 20950. The purpose of these meetings is to prepare for, and review the results of, the Third Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue which is scheduled for the week of February 23, 1998, at the IMO headquarters in London, England. Among other things, the items of particular interest are:

—The implementation of the Global Maritime Distress and Safety System (GMDSS)

—Maritime Search and Rescue matters

Further information, including meeting agendas with meeting room numbers, minutes, and input papers, can be obtained from the Coast Guard Navigation Information Center Internet World Wide Web by entering:

''http:/www.navcen.uscg.mil/marcomms/imo/imo.htm''

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing: Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters, Commandant (G–SCT–2), Room 6509, 2100 Second Street, S.W., Washington, DC 20593–0001, by calling: (202) 267–1389, or by sending Internet electronic mail to

rgrandmaison@comdt.uscg.mil.

Dated: May 14, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–13383 Filed 5–21–97; 8:45 am]

BILLING CODE 4716–07–M

DEPARTMENT OF STATE

[Public Notice No. 2548]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea Working Group on Dangerous Goods, Solid Cargoes and Containers; Notice of Meeting

The Working Group on Dangerous Goods, Solid Cargoes and Containers (DSC) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on Wednesday, June 18, 1997, in Room 6246, at the Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001. The purpose of the meeting is to discuss the outcome of the Second Session of the DSC Subcommittee of the International Maritime Organization (IMO) which was held February 24–28, 1997, at the IMO Headquarters in London. In addition, initial plans and preparations for the Third Session (DSC3) and other topics of interest, will be addressed.

The agenda items of particular interest are:

a. Amendment 29 to the International Maritime Dangerous Goods (IMDG) Code including harmonization of the IMDG Code with the United Nations Recommendations on the Transport of Dangerous Goods.

b. Implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78).

c. Development of measures complementary to the Irradiated Nuclear Fuel (INF) Code.

d. Amendments to the Safety of Life at Sea Convention (SOLAS) chapters VI and VII.

e. Bulk carrier safety: need for fitting water level alarms in cargo holds.

f. Revision of the format of the IMDG Code.

g. Loading and unloading of bulk cargoes.

h. Cargo securing manual.

i. Reports on incidents involving dangerous goods or marine pollutants in packaged form on board ships or in port areas.

j. Evaluation of properties of solid bulk cargoes.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. E.P. Pfersich, U.S. Coast Guard (G–MSO–3), 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: May 14, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–13384 Filed 5–21–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice No. 2547]

Shipping Coordinating Committee International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 11:00 a.m., on Thursday, June 5, 1997, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The purpose of this meeting is to report on the 75th session of the IMO Legal Committee, which was held April 21–25, 1997, in London, regarding financial responsibility for seagoing vessels, compensation for pollution from ships' bunkers, a draft convention on wreck removal, and other matters. This meeting will also be a further opportunity for interested members of the public to express their views on whether the United States should ratify the Hazardous and Noxious Substances Convention, adopted in London in May, 1996.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. Fur further information, for copies of conference documents, or to submit views concerning the subjects of discussion, communicate with either Captain Malcolm J. Williams, Jr., or Lieutenant Commander Bruce P. Dalcher, U.S. Coast Guard (G–LMI), 2100 Second Street, S.W., Washington, D.C. 20593, telephone (202) 267–1527, telefax (202) 267–4496.

Dated: May 14, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–13385 Filed 5–21–97; 8:45 am]

BILLING CODE 4710–07–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Functional Advisory Committee on Customs Matters (IFAC 1)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Functional Advisory Committee on Customs Matters (IFAC 1) will hold a meeting on June 16, 1997 from 9:30 a.m. to 12:30 p.m. The meeting will be open to the public.

DATES: The meeting is scheduled for June 16, 1997, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce in Room 1861, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Dan Gardner, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–3681 or Suzanna Kang, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The IFAC 1 will hold a meeting on June 16, 1997 from 9:30 a.m. to 12:30 p.m. The meeting will be open to the public and press during this time. Agenda topics to be addressed will be:

1. Customs Valuation Issues
2. Rules of Origin Work Program
3. Pre-Shipment Inspection Concerns
4. Harmonized System Committee Activities
5. Intellectual Property Rights from a Customs Perspective

Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Phyllis Shearer Jones,

Assistant United States Trade Representative, Intergovernmental Affair and Public Liaison.

[FR Doc. 97–13389 Filed 5–21–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Partnership Council Meeting

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of meeting.

SUMMARY: The Department of Transportation (DOT) announces a meeting of the DOT Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet on Wednesday, June 11, 1997, at 10:00 a.m., at the Department of Transportation, Nassif Building, rooms 6244–6249, 400 Seventh Street, SW., Washington, DC 20590. The rooms are located on the 6th floor.

TYPE OF MEETING: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

POINT OF CONTACT: John E. Budnik or Jean B. Lenderking, Corporate Effectiveness Division, M–13, Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 9425, Washington, DC 20590, (202) 366–9439 or (202) 366–8085, respectively.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to provide an update of current issues within the Department of Transportation including strategic planning, welfare-to-work initiatives, and partnership survey.

Public Participation: We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Ms. Jean Lenderking at the address shown above. Comments should be received by June 2, 1997 in order to be considered at the June 11 meeting.

Issued in Washington, DC, on May 16, 1997.

For the Department of Transportation.

John E. Budnik,

Associate Director, Corporate Effectiveness Division.

[FR Doc. 97–13508 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–025]

Application for Recertification of Cook Inlet Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard announces the availability of the application for recertification submitted by the Cook Inlet Regional Citizens' Advisory Council (CIRCAC) for June 1, 1997, through May 31, 1998. Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group (advisory group) in lieu of Regional Citizens' Advisory Councils for Cook Inlet Alaska.

DATES: Comments must be received on or before June 23, 1997.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA/ 3406) (CGD 97–025), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477. The application may be reviewed at the Cook Inlet Regional Citizens' Advisory Council's Office, 910 Highland Avenue, Kenai, Alaska 99611–8033, between the hours of 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (907) 283–7222.

FOR FURTHER INFORMATION CONTACT: For general information regarding the CIRCAC contact Mr. Mark Meza, Marine Safety and Environmental Protection Directorate, Office of Response, (G–MOR–1), (202) 267–0421.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. It solicits comments from interested groups including oil terminal facility owners and operators, owners and operators of crude oil tankers calling at the terminal facilities, and fishing, aquacultural, recreational and environmental citizens groups, concerning the recertification application of CIRCAC. If you submit a comment, please include your name and address, identify this docket (CGD 97–025) and specify the section of the application to which your comment applies. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you want confirmation that the Coast Guard has received your comments you should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period.

Background

The Coast Guard published guidelines on December 31, 1992, (57 FR 62600) to assist groups seeking recertification under the Act. The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36505), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act.

The Coast Guard has received an application for recertification of CIRCAC, the currently certified advisory group for the Cook Inlet region. In accordance with the review and certification process contained in the policy statement, the Coast Guard announces the availability of that application. At the conclusion of the comment period, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o).

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of the Act.

The Coast Guard will notify CIRCAC by letter of the action taken on its application. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: May 13, 1997.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–13515 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–027]

Application for Recertification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard announces the availability of the application for recertification submitted by the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) for July 1, 1997, through June 30, 1998. Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group (advisory group) in lieu of Regional Citizens' Advisory Councils for Prince William Sound Alaska.

DATES: Comments must be received on or before June 30, 1997.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA)/3406) (CGD 97–027), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477. The application may be reviewed at the Prince William Sound Regional Citizens' Advisory Council's Offices, at 750 W. 2nd Ave., Suite 100, Anchorage, Alaska, 99501 or 154 Fairbanks Dr., P.O. Box 3089, Valdez, Alaska, 99686, between the hours of 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (907) 277–7222 in Anchorage, AK, and (907) 835–5957 in Valdez, AK.

FOR FURTHER INFORMATION CONTACT: For general information regarding the PWSRCAC contact Mr. Mark Meza, Marine Safety and Environmental Protection Directorate, Office of Response, (G–MOR–1), (202) 267–0421.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. It solicits comments from interested groups including oil terminal facility owners and operators, owners and operators of crude oil tankers calling at the terminal facilities, and fishing, aquacultural, recreational and environmental citizens groups, concerning the recertification application of PWSRCAC. If you submit a comment, please include your name and address, identify this docket (CGD 97–025) and specify the section of the application to which your comment applies. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you want confirmation that the Coast Guard has received your comments you should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period.

Background

The Coast Guard published guidelines on December 31, 1992, to assist groups seeking recertification under the Act. The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36505), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act.

The Coast Guard has received an application for recertification of PWSRCAC, the currently certified advisory group for the Cook Inlet region. In accordance with the review and certification process contained in the policy statement, the Coast Guard announces the availability of that application. At the conclusion of the comment period, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o).

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of the Act.

The Coast Guard will notify PWSRCAC by letter of the action taken on its application. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: May 14, 1997.

R. C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine, Safety and Environmental Protection.

[FR Doc. 97–13513 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Tour Routes for the Grand Canyon National Park

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of commercial air tour routes for the Grand Canyon National Park and disposition of comments; correction.

SUMMARY: This action corrects the notice of availability of commercial air tour routes for the Grand Canyon National Park and disposition of comments document published in the **Federal Register** on May 15, 1997. The closing date for comments is corrected to read ''June 16, 1997.'' This correction of the closing date for comments is made to conform to the closing date for comments given in a companion document, Establishment of Corridors in the Grand Canyon National Park Special Flight Rules Area, also published in the **Federal Register** on May 15, 1997.

Background

On May 15, 1997, the FAA published a Notice of availability of commercial air tour routes for the Grand Canyon National Park and disposition of comments [62 FR 26909]. That document incorrectly indicated that the comment period would close on May 27, 1997. Concurrently with that notice, the FAA published an NPRM, Establishment of Corridors in the Grand Canyon National Park Special Flight Rules Area, with a close of comment date of June 16, 1997 [62 FR 26902].

Correction

In the **Federal Register** issue of May 15, 1997, in FR Doc. 97–12746, in the first column, on page 26909, correct the **DATES** caption to read:

DATES: Comments must be received on or before June 16, 1997.

Patricia Lane,

Manager, Air Space and Air Traffic Law Branch.

[FR Doc. 97–13522 Filed 5–19–97; 4:27 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Establishment of a Joint National Parks Overflights Working Group; National Park Service and Federal Aviation Administration

ACTION: Notice.

SUMMARY: The National Park Service (NPS) and Federal Aviation Administration (FAA) announce the establishment of the National Parks Overflights Working Group (NPOWG). The NPOWG is formed to recommend a proposed regulation which would define the process for reducing or preventing the adverse effects of commercial sightseeing flights over units of the National Park System. The NPS and FAA believe that the working group will provide the best forum for obtaining input to rulemaking on the issue of overflights of the national park units. This notice serves to inform the public of the formation of the working group.

DATES: The National Parks Overflights Working Group is established on May 19, 1997, and will terminate on September 2, 1997.

FOR FURTHER INFORMATION CONTACT: Carla Mattix, Officer of the Solicitor, U.S. Department of the Interior, 1849 C

St., NW, Washington, DC 20240, telephone: (202) 208–7957, or Linda Williams, Office of Rulemaking, Federal Aviation Administration, 800 Independence Ave., Washington, DC 20591, telephone: (202) 267–9685.

SUPPLEMENTARY INFORMATION:

Background

In 1987, Congress enacted Public Law 100–91, commonly known as the National Parks Overflights Act. The Act mandated a number of studies related to the effects of overflights on parks and directed the National Park Service to report to Congress its results. In March 1994, the FAA and NPS issued an advanced notice of rulemaking. Approximately 2,000 substantive comments were received; many thousands of additional comments were received as form letters.

In September 1994, the NPS issued their report to Congress. Recommendation No. 5 recommended that ''FAA develop an operational rule to regulate air tour operations where they have or may have adverse effects on national parks.'' NPS also identified a list of parks where it found that maintaining or restoring the natural quiet is an immediate priority.

By memorandum of April 22, 1996, President Clinton directed the Secretary of Transportation in consultation with relevant departments and agencies to issue a notice of proposed rulemaking for ''the management of sightseeing aircraft in those National Parks where it is deemed necessary to reduce or prevent the adverse effects of such aircraft.'' The regulation should, at a minimum, establish a framework for managing air traffic over those park units identified in the 1994 NPS study, as priorities for (1) Resolution of airspace issues and (2) maintaining or restoring natural quiet.''

Formation of the Working Group

The FAA has established an Aviation Rulemaking Advisory Committee (ARAC) [56 FR 2190, January 20, 1991; and 58 FR 9230, February 19, 1993] and the NPS has established the NPS Advisory Board under 49 Stat. 667; 16 U.S.C. 463, section 3 of the Act of August 21, 1935, as amended. The working group is established to recommend a notice of proposed rulemaking which would define the process to reduce or prevent the adverse effects of low-level commercial sightseeing flights over the National Parks where deemed necessary. The recommended proposed regulation should be limited to address the effects if commercial sightseeing flights over the units of the National Park System.

Specifically, the working group is tasked to:

> Define the process to reduce or prevent the adverse effects of commercial sightseeing flights over units of the national park system. Factors for consideration in the process may include voluntary, negotiated solutions and an appeal process.

The overflights working group is composed of nine members representing a balance of air tour operators, both fixed and rotary wing; general aviation users; other commercial aviation interests; national tour associations; environmental groups; and Native Americans. Co-chairs for the working group will be selected by the Department of Transportation (DOT) and the Department of Interior (DOI). DOT and DOI representatives will act as advisors to the membership, but will not be active members of the working group. A facilitator will provide focus for the group.

The working group will terminate 100 days from the date of its initial meeting. The group will make its final recommendations to the ARAC and NPS Advisory Board at the end of that 100 days. The ARAC and NPS Advisory Board will review the recommendations of the working group and report to the NPS and FAA. Progress or status reports from the working group are expected every 21 days. NPS and FAA anticipate that the final product of the NPOWG will be a recommended notice of proposed rulemaking.

The final report of the NPOWG will be made available to the public when it is reported to the Advisory Board and ARAC. In addition, both agencies envision that public meetings will be held following the publication of a notice of proposed rulemaking on the issues regarding overflights of the national parks.

The Secretary of the Interior and the Secretary of Transportation have determined that this working group is in the public interest because it presents an opportunity for interested groups to present their varied perspectives on the rulemaking.

Related Rulemaking

On January 3, 1997, the FAA issued a final rule temporarily banning commercial air tour overflights of the Rocky Mountain National Park [62 FR 1192; January 8, 1997]. In that final rule the FAA stated that this temporary Special Federal Aviation Regulation would expire as soon as a general rule on overflights of the national parks is adopted.

In addition, the FAA has underway a rulemaking effort to establish safety standards for all air tour operations.

Issued in Washington, DC on May 19, 1997.

Joseph A. Hawkins,

Director of Rulemaking, Federal Aviation Administration.

[FR Doc. 97–13521 Filed 5–19–97; 4:27 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Programmatic EO 11990 Wetland Finding: New York State

AGENCY: Federal Highway Administration, New York Division Office (NYDO), DOT.

ACTION: Public notice of programmatic EO 11990 wetland finding.

SUMMARY: The NYDO is issuing this notice to advise the public that it has made a programmatic EO 11990 Wetland Finding for Federally Aided Highway Projects Classified as a Categorical Exclusion under 23 CFR 771.117 which involve only the use of U.S. Corps of Engineers (COE) Section 404 Nationwide Permits. The Finding was circulated to Federal and State regulatory and resource agencies as well as all of the New York Metropolitan Planning Organizations and the Statewide clearinghouse for their input prior to finalization.

FOR FURTHER INFORMATION CONTACT: William A. Gates, Environmental Coordinator, Federal Highway Administration, New York Division Office, Leo W. O'Brien Federal Building, 9th Floor, Albany, NY 12207, Telephone: 518–431–4125.

SUPPLEMENTARY INFORMATION: This programmatic Executive Order 11990 (EO 11990) evaluation and wetland finding has been prepared for transportation improvement projects which require only a Corps of Engineers (COE) Section 404 Nationwide Permit for work which will affect waters of the United States. It satisfies the requirements of EO 11990 and U.S. Department of Transportation (DOT) Order 5660.1A for all projects that meet the applicability criteria listed below. No individual wetland finding need be prepared for such projects.

Background

EO 11990, issued on May 24, 1977, requires each agency to develop procedures for Federal actions whose impact is not significant enough to require the preparation of an

Environmental Impact Statement (EIS) under Section 102(2)(C) of the National Environmental Policy Act (NEPA) as amended. It also includes a clause in Section 6 indicating that existing processes ''to the extent possible'' be used to fulfill the requirements of the order.

The DOT issued DOT Order 5660.1A on August 24, 1978. The DOT Order defines ''New construction'' as including any draining, dredging, channelizing, filling, diking, impounding, and related activities. It does not include routine repairs and maintenance of existing facilities. The DOT Order indicates that any project which will have a significant impact on wetlands will require preparation of an EIS. Paragraph 7f of the Order states ''In carrying out any activities (including small scale projects which do not require documentation) with a potential effect of wetlands, operating agencies should consider the following factors in implementing the Department policy relevant to a proposal's effect on the survival and quality of wetland: (1) Public health, safety and welfare, including water supply, water quality, recharge and discharge, and pollution; flood and storm hazards; and sedimentation and erosion; (2) Maintenance of natural systems, including conservation and long-term activity of existing flora and fauna, species habitat diversity and stability, hydrologic utility, fish and wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural use as well as transportation uses and objectives.''

On August 28, 1987, the Federal Highway Administration published new regulations implementing the National Environmental Policy Act codified in 23 CFR 771. Section 771.117 describes a class of actions that do not individually or cumulatively have a significant environmental effect and are excluded from the requirement to prepare an Environmental Assessment or Environmental Impact Statement.

The COE has promulgated regulations establishing several types of general permits, Nationwide Permits (NWPs), which are designed to regulate with little, if any, delay or paperwork certain activities having minimal impacts. These activities are authorized under an NWP only if that activity and the permittee satisfy all of the NWP's terms and conditions.

Applicability

This programmatic wetland finding may be applied in the following circumstances:

1. The project being evaluated is classified as a Categorical Exclusion under NEPA.

2. The only COE permit(s) required fits the description and satisfies all of the terms and conditions, including regional conditions of an NWP.

3. The New York State Department of Transportation has prepared a Design Approval Document containing:

A. A brief narrative describing the wetland(s) location, state and federal wetlands classifications, approximate wetland area, covertypes, and the area of proposed wetland impact;

B. A plan showing the wetland(s) location, approximate boundaries, and area within the project limits, and the area(s) of proposed wetland impact;

C. A brief discussion of the type and size of permanent and/or temporary direct and indirect impacts on the wetlands and its functions caused by draining, dredging, channelizing, filling, diking, impounding, and related activities considering factors described in Section five of EO11990;

D. A statement that there are no practicable alternatives to the construction in wetland(s) and brief supporting explanation describing the efforts to avoid impacts; and

E. A brief discussion of the practicable measures to minimize harm to the involved wetlands that will be incorporated into the design and construction of the project.

4. The project has been developed in accordance with the procedure for a public involvement/public hearing program approved by FHWA pursuant to 23 CFR 771.111(h)(1).

In accordance with Executive Order 11990, Section 2(a), I find that for all Federal-aid projects which meet the above conditions (1) that there is no practicable alternative to the proposed construction and (2) the proposed project includes all practicable measures to minimize harm to the involved wetlands which may result from the construction of the transportation project. Any Federal-aid transportation project impacting wetlands not meeting the above conditions shall require an individual wetland finding.

Comments or questions concerning this finding should be directed to the FHWA at the address provided above.

(Catalog of Federal Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: March 9, 1997.

[FR Doc. 97–13396 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. PS–142; Notice 6]

Pipeline Risk Management Demonstration Project; Electronic Town Meeting

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice.

SUMMARY: On Thursday, June 5, 1997, the Office of Pipeline Safety (OPS) will sponsor a satellite-based, town meeting video teleconference on the status of the Pipeline Risk Management Demonstration Program. The broadcast will show how communities can learn about demonstration projects in their area, and the potential benefits that may result. It will be aired from 2:00 p.m. to 5:00 p.m. Eastern Daylight Time, and will be easily accessible nationwide. We hope you will tune in, and perhaps even participate via call-in questions and comments. We also hope you will invite others in your organization and community to watch this broadcast as well. Meaningful community involvement and effective communication are critical elements in the success of the Demonstration Program.

DATES: The town meeting video teleconference will be aired on June 5, 1997, from 2:00 p.m. to 5:00 p.m. Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, or by e-mail (eben.wyman@rspa.dot.gov), regarding the subject matter of this Notice. Contact the Dockets Unit (202) 366–5046, for other material in the docket.

SUPPLEMENTARY INFORMATION: The Demonstration Program tests an innovative regulatory approach to achieving superior safety performance by allowing pipeline operators to customize safety activities. The June 5 electronic town meeting is a follow-on to the January 28, 1997, public meeting sponsored by OPS to familiarize government agencies, pipeline operators, and other interested parties with the Program. OPS hopes the June 5 broadcast will reach an even wider audience, including safety and environmental officials in communities likely to be affected by demonstration projects. OPS will present background

information about the Demonstration Program, and several candidate companies will describe the projects they are proposing.

During the coming months while OPS is evaluating candidate projects, stakeholders are encouraged to ask questions and provide information they feel is relevant. As part of the broadcast, a dramatization of the evaluation process will show the opportunities OPS will provide stakeholders for questions and comments about the projects, and how stakeholder input might impact the provisions of a project before it is approved. During the broadcast, viewers will have several opportunities to call in and ask questions to OPS staff and candidate companies. The call-in number will be provided numerous times throughout the broadcast.

The electronic town meeting will be broadcast by the Federal Emergency Management Agency's Emergency Education Network (EENET), which has been broadcasting for more than ten years and has an extensive audience in the fire and emergency management communities. By using EENET, OPS hopes to involve thousands of public safety and emergency management officials who routinely receive these programs. EENET sites use the widely available ''backyard satellite dish'' technology.

Here are the ways you can watch this broadcast:

—Contact your local television cable company and ask if they will carry this EENET video broadcast.
—Contact your local government cable access office for specific information. Many local governments have dedicated internal cable systems which carry programs such as these to their offices and other facilities.
—Use a local facility which has a TeleVision Receive-Only (''dish''). Many schools (elementary, secondary, and community colleges), hospitals, or local hotels and motels have these facilities.
—Rent a portable TeleVision Receive-Only (''dish'') and have it set up at your viewing place.
—Set up a TeleVision Receive-Only (''dish'') at your viewing facility.

The technical information necessary to align the receiver dish with one of the satellites is:

KU-Band Satellite

SBS 6
Transponder 9
Downlink Frequency: 11921 MHZ
Audio Frequency: 6.2/6.8
Location: 74 degrees West
Polarity: Horizontal

C-Band Satellite

Galaxy 3
Transponder 21
Downlink Frequency: 4120 MHZ
Audio Frequency: 6.2/6.8
Location: 95 degrees West
Polarity: Horizontal

The technical test the day before is from 1:00 p.m. until 2:00 p.m. Eastern Daylight Time.

For additional information, call EENET at 1–800–527–4893.

Issued in Washington, D.C. on May 16, 1997.

Cesar De Leon,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 97–13506 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. P–97–2W; Notice 2]

Liquefied Natural Gas Facilities Petition for Waiver; Northern Eclipse, Inc.

Northern Eclipse, Inc. (NE) petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with 49 CFR § 193.2155(c), Liquefied Natural Gas (LNG) storage tank impounding system. Section 193.2155(c) requires a Class 1 impounding system whenever an LNG storage tank is located within 20,000 feet from the nearest runway serving large aircraft. The petition applies to the Northern Eclipse's proposed LNG storage facility at Fairbanks, Alaska.

The petitioner requested the waiver from compliance with the Class 1 impounding system based on the following reasons:

1. Fairbanks does not currently have natural gas service, and given the distance to gas fields and the size of the market, petitioner believes that LNG is the only feasible way to provide natural gas service in the community.

2. Fairbanks is a small town by a lower-48 states standards, however, due to international air transport and reliance of Alaskans on air travel, Fairbanks has an international airport (FIA) with a 11,050 foot long runway. In addition, Fairbanks has a similar runway for a U.S. military base (Fort Wainwright), and other smaller runways in the area. The 20,000 foot restriction requirement eliminates any reasonable site in Fairbanks for an LNG storage tank and it would not be economically feasible to build an impounding system which would withstand a direct impact from a 747, in order to provide gas service to the Fairbanks community.

3. NE does not propose to locate its storage tank in the approach/departure corridor for heavy aircraft. The areas under consideration are approximately two miles to the side of the FIA runway.

4. NE proposes the use of a shop fabricated, heavy outer wall storage tank of less than 70,000 gallon capacity, built to National Aeronautical and Space Administration specifications, and likely to survive even a direct impact from small aircraft.

5. Similar LNG storage tanks and dispensing facilities are routinely allowed at airports without impoundment as they are not subject to Part 193 requirements, but they pose precisely the same risk in the event of a collision, and due to their location at the airport pose a much greater risk of impact from an aircraft. To support this fact, NE provided pictures of an above ground NFPA 59A LNG storage tank at the Dallas/Fort Worth airport.

6. Part 193 contains special provisions for LNG tanks with less than a 70,000 gallon capacity. However, Section 193.2155(c) fails to reflect the vastly different risks posed by different sized LNG storage tanks. A small LNG tank like that proposed by NE poses no significant risk, and certainly no more than any other similar small energy storage tank, such as a propane tank or a non-Part 193 LNG tank.

7. During the December 9, 1996, meeting between NE and OPS on this issue, NE was informed that the origin of the distance of 20,000 feet from the airport was taken from the Federal Aviation Administration's (FAA) Regulations under 14 CFR Part 77, which define a critical area surrounding a large airport. According to NE, only Section 77.13(a)(2)(I) of 14 CFR Part 77, addresses 20,000 ft. restriction, which exists where there are runways of over 3,200 feet in length, and that section refers only to the heights of structures. NE believes that the FAA may be concerned with the height of the structure rather than the contents.

After reviewing the petition, RSPA published a notice inviting interested persons to comment on whether a waiver should be granted (Notice 1) (62 FR 10307; March 6, 1970). RSPA stated it was considering granting the requested waiver because of the unusual circumstances described at NE's proposed LNG facility, relatively low risk to the public safety due to a smaller tank, and the operators's use of a shop fabricated heavy outer wall built to

more stringent standards than those specified under Part 193. RSPA also stated that the operator will be required to comply with all other requirements of Part 193 including Class 2 impounding system for the storage tank. RSPA did not receive any comments in response to the notice.

For the reasons explained above and in Notice 1, RSPA, by this order, finds that the requested waiver of 49 CFR 193.2155(c) is appropriate and is not inconsistent with pipeline safety.

Therefore, Northern Eclipse's petition for waiver from compliance with 49 CFR 193.2155(c) is granted, effective May 22, 1997.

Authority: 49 App. U.S.C. 2002(h) and 2015; and 49 CFR 1.53.

Issued in Washington, D.C. on May 15, 1997.

Cesar De Leon,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 97–13505 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–97–2236; Notice 1]

Liquefied Natural Gas Facilities Grant of Waiver; Pine Needle LNG Co.

Pine Needle LNG Company (Pine Needle) petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with 49 CFR 193.2155(c), Liquefied Natural Gas (LNG) storage tank impounding system. Section 193.2155(c) requires a Class 1 impounding system whenever an LNG storage tank is located within 20,000 feet from the nearest runway serving large aircraft. The petition applies to the Pine Needle's proposed LNG storage facility in the northwest Guilford County, North Carolina.

Pine Needle's rationale for the waiver from compliance with 49 CFR 193.2155(c) was based on the following:

1. The horizontal distance between the nearest Pine Needle LNG tank and the nearest point of the Landmark Airpark runway is approximately 19,500 feet. This is 500 feet less than the 20,000 foot offset required for compliance with Section 193.2155(c).

2. The vertical clearance of an aircraft over the top of the Pine Needle earthen containment dikes would be 1,023 feet, after factoring in a minimum airport approach/departure ratio of 20:1 to/from Landmark Airpark and the elevation differences between the Landmark Airpark runway and the Pine Needle location. This exceeds the minimum requirements under the Federal Aviation Administration (FAA) regulations.

3. Correspondence between FAA and the Landmark Airpark developer describes operation of the Landmark Airpark as being limited to private aircraft under visual flight rules (VFR) conditions.

4. The turf runway surface and 2,600-foot runway length would likely preclude large aircraft, as defined by 14 CFR 1.1, from using the Landmark Airpark.

5. Pine Needle owns, leases, or controls all properties within the exclusion zones required under 49 CFR 193.2057 and 193.2059. There is presently no development within the prescribed exclusion zones. Pine Needle will allow no development within the required exclusion zones that would be inconsistent with the requirements of Sections 193.2057 and 193.2059.

6. The Class 2 impounding system proposed for the Pine Needle LNG storage tanks would remain intact in the event of a large aircraft impact, and, with a design volume of 150% of tank capacity, would meet the volumetric requirements of § 193.2181(a).

7. The earthen dikes in combination with the hilly terrain and the undeveloped safety exclusion zones around the facility would adequately provide for hazard containment.

After reviewing the petition, RSPA published a notice inviting interested persons to comment on whether a waiver should be granted (Notice 1) (62 FR 16641; April 7, 1997). RSPA stated it was considering granting the requested waiver because of the unusual circumstances at Pine Needle's proposed LNG facility, i.e., located 19,500 feet from the nearest point of the Landmark Airpark runway, suitable for landing smaller aircrafts and any larger aircrafts that could reasonably use this facility, relatively low risk to the public safety due to combination of Class 2 earthen dikes in a hilly terrain with 150% volumetric capacity, and undeveloped safety exclusion zones around facility owned and controlled by the Pine Needle RSPA believes that granting a waiver from the requirements of 49 CFR 193.2155(c) would not be inconsistent with pipeline safety, nor would it lessen public safety. Of course, the operator must comply with all other requirements of part 193. RSPA did not receive any comments in response to the notice.

For the reasons explained above and in Notice 1, RSPA finds that the requested waiver of 49 CFR 195.2155(c) is appropriate and is not inconsistent with pipeline safety. Therefore, Pine Needle Company's petition for waiver from compliance with 49 CFR 195.2155(c) is granted, effective May 22, 1997.

Authority: 49 App. U.S.C. 2002(h) and 2015; and 49 CFR 1.53.

Issued in Washington, D.C., on May 16, 1997.

Cesar De Leon,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 97–13507 Filed 5–21–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 109X)]

Union Pacific Railroad Company—Abandonment Exemption—in Malheur County, OR and Owyhee County, ID (Homedale Branch)

On May 2, 1997, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 and 10904 to abandon a segment of UP's Homedale Branch, extending from milepost 11.4 near Adrian, OR, to the end of the line at milepost 33.5 near Marsing, ID. The line traverses U.S. Postal Service Zip Codes 97901, 83628, and 83639, a distance of 22.1 miles, in Malheur County, OR, and Owyhee County, ID, and includes the non-agency stations of Napton, OR—milepost 16.90; Homedale, ID—milepost 24.50; Petty, ID—milepost 25.89; and Marsing—milepost 33.10.

The line contains federally granted rights-of-way, tentatively determined to total 7.45 acres, of which 6.28 acres are located in Oregon south of Adrian at approximately milepost 12.0, and 27,500 square feet are located in Idaho north of Homedale at about milepost 23.1. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by August 20, 1997).

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for

exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 and any request for trail use/rail banking under 49 CFR 1152.29 will be due no later than 20 days after notice of the petition for exemption is published in the **Federal Register** (by June 11, 1997). Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 109X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Joseph D. Anthofer and Jeanna L. Regier, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Board's Section of Environmental Analysis (SEA) will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS), or who have questions concerning environmental issues, may contact SEA at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.] EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: May 16, 1997.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 97–13523 Filed 5–21–97 ; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2106–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2106–EZ, Unreimbursed Employee Business Expenses.

DATES: Written comments should be received on or before July 21, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Unreimbursed Employee Business Expenses.

OMB Number: 1545–1441.

Form Number: 2106–EZ.

Abstract: Internal Revenue Code section 62 allows employees to deduct their business expenses to the extent of reimbursement in computing adjusted gross income. Expenses in excess of reimbursements are allowed as an itemized deduction. Unreimbursed meals and entertainment are allowed to the extent of 50% of the expense. Form 2106–EZ is used by employees who are deducting expenses attributable to their jobs and are not reimbursed by their employer for any expenses or who own a vehicle used for business purposes and use the standard mileage rate.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,337,019.

Estimated Time Per Respondent: 1 hr., 32 min.

Estimated Total Annual Burden Hours: 5,139,009.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 14, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–13538 Filed 5–21–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–IC–DISC, Schedules K and P

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–IC–DISC, Interest Charge Domestic International Sales Corporation Return, Schedule K, Shareholder's Statement of IC–DISC Distributions, and Schedule P, Intercompany Transfer Price or Commission.

DATES: Written comments should be received on or before July 21, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be 2 directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Interest Charge Domestic International Sales Corporation Return (Form 1120–IC–DISC), Shareholder's Statement of IC–DISC Distributions (Schedule K), and Intercompany Transfer Price or Commission (Schedule P).

OMB Number: 1545–0938.

Form Number: 1120–IC–DISC, Schedules K and P.

Abstract: U.S. corporations that have elected to be an interest charge domestic international sales corporation (IC–DISC) file Form 1120–IC–DISC to report their income and deductions. The IC–DISC is not taxed, but IC–DISC shareholders are taxed on their share of IC–DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule K (Form 1120–IC–DISC) is used to report income to shareholders. Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report its dealings with related suppliers.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 193 hr., 8 min.

Estimated Total Annual Burden Hours: 231,773.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 14, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer

[FR Doc. 97–13539 Filed 5–21–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2106

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2106, Employee Business Expenses.

DATES: Written comments should be received on or before July 21, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employee Business Expenses.

OMB Number: 1545–0139

Form Number: 2106.

Abstract: IRC section 62 allows employees to deduct their business expenses to the extent of reimbursement in computing adjusted gross income. Expenses in excess of reimbursements are allowed as an itemized deduction. Unreimbursed meals and entertainment are allowed to the extent of 50% of the expense. Form 2106 is used to compute these expenses.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 762,514.

Estimated Time Per Respondent: 3 hr., 29 min.

Estimated Total Annual Burden Hours: 2,663,610.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 14, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–13540 Filed 5–21–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form W–7A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–7A, Application for Taxpayer Identification Number for Pending Adoptions.

DATES: Written comments should be received on or before July 21, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha Brinson, (202) 622–3869, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Taxpayer Identification Number for Pending Adoptions.

OMB Number: To be assigned later.

Form Number: Form W–7A.

Abstract: Form W–7A will be used to apply for an Internal Revenue Service taxpayer identification number (an ATIN) for use in pending adoptions. An ATIN is a temporary nine-digit number issued by the Internal Revenue Service to individuals who are in the process of adopting a United States resident child but who cannot get a social security number for that child until the adoption is final.

Current Actions: This is a new collection of information.

Type of Review: New OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 47 minutes.

Estimated Total Annual Burden Hours: 39,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 15, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–13541 Filed 5–21–97; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 62, No. 99

Thursday, May 22, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–20]

RIN 0579–AA83

Karnal Bunt Regulatory Flexibility Analysis and Regulatory Impact Analysis

Correction

In rule document 97–11718, beginning on page 24753, in the issue of Tuesday, May 6, 1997, make the following corrections.

1. On page 24755, in Table 1., in the third column, for Variable expenses, under 0%, ''4,823,823'' should read ''4,828''.

2. On page 24755, in Table 1., ''4,828'' should be added in the sixth column under 50% for Variable expenses.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket. No. 970429101–7101–01; I.D. 042497B]

RIN 0648–AJ09

Fisheries Off West Coast and Western Pacific States; West Coast Salmon Fisheries; 1997 Management Measures

Correction

In rule document 97–11677, beginning on page 24355 in the issue of Monday, May 5, 1997, make the following correction:

On page 24364, Table 3 should appear as set forth below:

Table 3. Treaty Indian management measures for 1997 ocean salmon fisheries

Note: This table contains important restrictions in parts A, B, and C which must be followed for lawful participation in the fishery.

A. Season Descriptions

Tribe and area boundaries	Open seasons	Salmon species	Minimum size limit (inches*)		Special restrictions by area
			Chinook	Coho	
Makah—That portion of the Fishery Management Area (FMA) north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long..	May 1 through earlier of June 30 or overall 7,500 chinook guideline. August 1 through earliest of September 15 or chinook or coho quota.	All except coho .. .. All.	24 24	— 16	Barbless hooks. No more than 8 fixed lines per boat or no more than 4 hand-held lines per person.
Quileute—That portion of the FMA between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat. (Queets River) east of 125°44′00″ W. long.	May 1 through earlier of June 30 or overall 7,500 chinook guideline. August 1 through earliest of September 15 or chinook or coho quota.	All except coho .. .. All.	24 24	— 16	Barbless hooks. No more than 8 fixed lines per boat.
Hoh—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River) east of 125°44′00″ W. long.	May 1 through earlier of June 30 or overall 7,500 chinook guideline. August 1 through earliest of September 15 or chonook or coho quota.	All except coho .. .. All.	24 24	— 16	Barbless hooks. No more than 8 fixed lines per boat.
Quinault—That portion of the FMA between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis) east of 125°44′00″ W. long.	May 1 through earlier of June 30 or overall 7,500 chinook guideline. August 1 through earliest of September 15 or chinook or coho quota.	All except coho .. .. All.	24 24	— 16	Barbless hooks. No more than 8 fixed lines per boat.

* Metric equivalents: 24 inches=61.0 cm, 16 inches=40.6 cm.

BILLING CODE 1505-01-D

THE PRESIDENT

3 CFR

Executive Order 13046 of May 16, 1997

Further Amendment to Executive Order 12975, Extension of National Bioethics Advisory Commission

Correction

In Presidential document 97–13450 appearing on page 27685 in the issue of Tuesday, May 20, 1997, the subject heading was incorrect and should appear as set forth above.

BILLING CODE 1505-01-D

federal register

Thursday
May 22, 1997

Part II

Securities and Exchange Commission

17 CFR Parts 275 and 279

Rules Implementing Amendments to the Investment Advisers Act of 1940; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–1633, File No. S7–31–96]

RIN 3235–AH07

Rules Implementing Amendments to the Investment Advisers Act of 1940

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting new rules and rule amendments under the Investment Advisers Act of 1940 (''Advisers Act'') to implement provisions of the Investment Advisers Supervision Coordination Act (''Coordination Act'') that reallocate regulatory responsibilities for investment advisers between the Commission and the states. The rules establish the process by which certain advisers will withdraw from Commission registration, exempt certain advisers from the prohibition on Commission registration, and define certain terms. The Commission also is amending several rules under the Advisers Act to reflect the changes made by the Coordination Act. The rules and rule amendments are intended to clarify provisions of the Coordination Act and assist investment advisers in ascertaining their regulatory status.

EFFECTIVE DATES: July 8, 1997, except for § 275.203A–2, which will become effective on July 21, 1997. See section iii of this Release.

FOR FURTHER INFORMATION CONTACT: Catherine M. Saadeh, Staff Attorney, or Cynthia G. Pugh, Staff Attorney, at (202) 942–0691, Task Force on Investment Adviser Regulation, Division of Investment Management, Stop 10–2, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The Commission has placed a list of frequently asked questions and answers about Form ADV–T and the changes in the regulation of investment advisers on the Commission's Internet web site. This list is located at http://www.sec.gov/rules/othern/advfaq.htm. The Commission staff will update these questions and answers from time to time. The Commission urges interested persons with access to the World Wide Web to review these questions and answers before contacting Commission staff.

SUPPLEMENTARY INFORMATION: The Commission is adopting new rules 203A–1, 203A–2, 203A–3, 203A–4, 203A–5, 222–1, and 222–2 (17 CFR 275.203A–1, 275.203A–2, 275.203A–3, 275.203A–4, 275.203A–5, 275.222–1, and 275.222–2), and amendments to rules 203(b)(3)–1, 204–1, 204–2, 205–3, 206(3)–2, 206(4)–1, 206(4)–2, 206(4)–3, and 206(4)–4 (17 CFR 275.203(b)(3)–1, 275.204–1, 275.204–2, 275.205–3, 275.206(3)–2, 275.206(4)–1, 275.206(4)–2, 275.206(4)–3, and 275.206(4)–4), and Form ADV (17 CFR 279.1) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1) (the ''Advisers Act'' or the ''Act''). The Commission is rescinding Form ADV–S (17 CFR 279.3) under the Advisers Act.

Table of Contents

Executive Summary
I. Background
II. Discussion
A. Form ADV–T
B. Assets Under Management
1. Securities Portfolios
2. Continuous and Regular Supervisory or Management Services
3. Safe Harbor for State-Registered Investment Advisers
4. Valuation and Reporting of Securities Portfolios
C. Transitions Between State and Commission Registration
1. Transition from Commission to State Registration
a. Annual Reporting of Continued Eligibility
b. 90-Day Grace Period
c. Cancellation of Commission Registration
2. Transition from State to Commission Registration
a. The $5 Million ''Window''
b. Registration with the Commission
D. Exemptions from Prohibition on Registration with the Commission
1. Nationally Recognized Statistical Rating Organizations
2. Pension Consultants
3. Certain Affiliated Investment Advisers
4. Investment Advisers With Reasonable Expectation of Eligibility
5. Advisers to ERISA Plans
E. Investment Advisers Not Regulated or Required to be Regulated by States
1. ''Regulated or Required to be Regulated''
2. ''Principal Office and Place of Business''
F. Persons Who Act on Behalf of Investment Advisers
1. ''Investment Adviser Representative''
a. Retail Clients
b. Accommodation Clients
c. Supervised Persons Providing Indirect or Impersonal Advice
d. Dually Registered Investment Adviser Representatives
e. Solicitors
2. ''Place of Business''
G. National De Minimis Standard
H. Scope of State Authority Over Commission-Registered Investment Advisers
1. Preemption of State Regulatory Authority
2. Preservation of State Anti-Fraud Authority
I. Other Amendments to Advisers Act Rules
1. Amendments to Form ADV; Elimination of Form ADV–S
2. Rule 204–2—Books and Records
3. Rule 205–3—Performance Fee Arrangements
4. Rule 206(3)–2—Agency Cross Transactions
5. Rules 206(4)–1, 206(4)–2, and 206(4)–4—Anti-Fraud Rules
III. Effective Dates
IV. Paperwork Reduction Act
V. Cost/Benefit Analysis
VI. Summary of Regulatory Flexibility Analysis
VII. Statutory Authority
Text of Rules and Forms
Appendix A: Form ADV–T
Appendix B: Schedule I to Form ADV

Executive Summary

The Commission is adopting rules and rule amendments to implement certain provisions of the Investment Advisers Supervision Coordination Act. The Coordination Act amended the Advisers Act to, among other things, reallocate the responsibilities for regulating investment advisers (''investment advisers'' or ''advisers'') between the Commission and the securities regulatory authorities of the states. Generally, the Coordination Act provides for Commission regulation of advisers with $25 million or more of assets under management, and state regulation of advisers with less than $25 million of assets under management. The rules and rule amendments:

- Establish the process by which advisers that are currently registered with the Commission determine their status as Commission-or state-registered advisers after July 8, 1997, the effective date of the Coordination Act;
- Amend Form ADV to require advisers to report annually to the Commission information relevant to their status as Commission-registered advisers;
- Relieve advisers of the burden of frequently having to register and then de-register with the Commission as a result of changes in the amount of their assets under management;
- Provide certain exemptions from the prohibition on registration with the Commission;
- Define certain terms used in the Coordination Act, including ''investment adviser representative,'' ''principal office and place of business,'' and ''place of business''; and
- Clarify how advisers should count clients for purposes of both the new national de minimis exemption from state regulation and the federal de minimis exemption from Commission registration.

I. Background

On October 11, 1996, President Clinton signed into law the National Securities Markets Improvement Act of 1996 (''1996 Act'').[1] Title III of the 1996 Act, the Coordination Act, makes several amendments to the Advisers Act. The most significant of these amendments reallocates federal and state responsibilities for the regulation of the approximately 23,350 investment advisers currently registered with the Commission.[2] These amendments will become effective on July 8, 1997.[3]

The reallocation of regulatory responsibilities grew out of a number of Congressional concerns regarding the regulation of investment advisers. Congress was concerned that the Commission's resources are inadequate to supervise the activities of the growing number of investment advisers registered with the Commission, many of which are small, locally operated, financial planning firms.[4] Congress concluded that if the overlapping regulatory responsibilities of the Commission and the states were divided by making the states primarily responsible for smaller advisory firms and the Commission primarily responsible for larger firms, the regulatory resources of the Commission and the states could be put to better, more efficient use.[5]

Congress also was concerned with the cost imposed on investment advisers and their clients by overlapping, and in some cases, duplicative, regulation.[6] In addition to the Commission, forty-six states regulate the activities of investment advisers under state investment adviser statutes.[7] States generally have asserted jurisdiction over investment advisers that ''transact business'' in their state.[8] Consequently, many large advisers operating nationally have been subject to the differing laws of many states. Industry participants strongly asserted that compliance with differing state laws has imposed significant regulatory burdens on these large advisers.[9] Congress intended to reduce these burdens by subjecting large advisers to a single regulatory program administered by the Commission.[10]

The Coordination Act reallocates regulatory responsibilities over advisers by limiting the application of federal law and preempting certain state laws. Under new section 203A(a) of the Advisers Act,[11] an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless the adviser (i) has assets under management of not less than $25 million (or such higher amount as the Commission may, by rule, deem appropriate), or (ii) is an adviser to an investment company registered under the Investment Company Act of 1940 (the ''Investment Company Act'').[12] The Commission is authorized to deny registration to any applicant that does not meet the criteria for Commission registration,[13] and is directed to cancel the registration of any adviser that no longer meets the criteria for registration.[14]

On December 20, 1996, the Commission proposed rules and rule amendments to implement the Coordination Act.[15] The proposed rules would establish the process by which advisers no longer eligible to register with the Commission would withdraw from Commission registration, exempt certain advisers from the prohibition on Commission registration, and define certain terms used in the Coordination Act. The Commission also proposed to amend several rules under the Advisers Act to reflect the changes made by the Coordination Act.

The Commission received 105 comment letters in response to the proposal, most of which were from investment advisers and their trade groups and counsel (hereinafter collectively referred to as ''investment adviser commenters''). Twenty-six comment letters were received from state securities regulators (hereinafter referred to as ''states''), including the North American Securities Administrators Association, Inc. (''NASAA'').[16]

In preparing these implementing rules for adoption, the Commission has been guided by the language of the Coordination Act and the policy considerations that led to its enactment. The Commission does not believe that it would be appropriate or within its proper authority to revisit policy decisions made by Congress, as some commenters appear to have suggested.

II. Discussion

The Commission is adopting several rules implementing the provisions of the Coordination Act designed to reallocate the regulatory responsibilities for investment advisers between the Commission and the states.

A. Form ADV–T

Approximately 23,350 investment advisers currently are registered with the Commission. Based on information provided by these advisers, the Commission estimates that more than two-thirds of them would not be eligible to register with the Commission after July 8, 1997. These advisers must withdraw from registration or their registrations will be subject to

[1] Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[2] Other amendments made by the 1996 Act to the Advisers Act include revisions to (i) section 205 (15 U.S.C. 80b–5) to create additional exceptions to the Advisers Act's limitations on performance fee arrangements, (ii) section 222 (15 U.S.C. 80b–18a) to impose certain uniformity requirements on state investment adviser laws (*see infra* section II. G of this Release), (iii) section 203(e) (15 U.S.C. 80b–3(e)) to permit the Commission to deny or revoke the registration of any person convicted of any felony (or of any adviser associated with such a person), and (iv) section 203(b) (15 U.S.C. 80b–3(b)) to exempt from registration certain advisers to church employee pension plans. *See* sections 210, 304, 305(a), and 508(d) of the 1996 Act.

[3] *See* section 308(a) of the Coordination Act. The effective date of the Coordination Act was originally April 9, 1997. On March 31, 1997, President Clinton signed into law Pub. L. 105–8, which extended the effective date of the Coordination Act to July 8, 1997. *See* 111 Stat. 15 (1997).

[4] *See* S. Rep. No. 293, 104th Cong., 2d Sess. 3–4 (1996) (hereinafter Senate Report). The number of investment advisers registered with the Commission increased dramatically from 5,680 in 1980 to approximately 23,350 today. By 1995, the Commission was able to examine smaller advisers on a routine basis on average only once every 44 years. *See The Securities Investment Promotion Act of 1996: Hearing on S. 1815 Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 104th Cong., 2d Sess. 36 (1996) (hereinafter Senate Hearing) (testimony of Arthur Levitt, Chairman, SEC).

[5] *See* Senate Report, *supra* note 4, at 3–4.

[6] *Id.* at 2.

[7] The District of Columbia, Guam, and Puerto Rico also have enacted statutes regulating investment advisers. *See* D.C. Code Ann. sections 2–2631 to –2651 (1994); 22 Guam Code Ann. sections 46201–46206 (1995); P.R. Laws Ann. tit. 10, sections 861–864 (1976). The four states that currently do not have investment adviser statutes are Colorado, Iowa, Ohio, and Wyoming.

[8] *See, e.g.*, Unif. Sec. Act section 201(c) (1988); Ark. Code Ann. section 23–42–301(c) (Michie Supp. 1995); Md. Code Ann., Corps & Ass'ns section 11–401(b) (1993).

[9] *See* Senate Hearing, *supra* note 4, at 153 (Testimony of Mark D. Tomasko, Executive Vice President, Investment Counsel Association of America, Inc.) (''In some (advisory) firms, there are one or more persons whose sole job is to work on State registrations and requirements.'').

[10] *See* Senate Report, *supra note* 4, at 2.

[11] 15 U.S.C. 80b–3A(a).

[12] 15 U.S.C. 80a. Any person that is an investment adviser to an investment company under section 2(a)(20) of the Investment Company Act (15 U.S.C. 80a–2(a)(20)), including a ''sub-adviser,'' is eligible to register with the Commission, regardless of the amount of assets under management.

[13] Section 203(c) of the Advisers Act (15 U.S.C. 80b–3(c)).

[14] Section 203(h) of the Advisers Act (15 U.S.C. 80b–3(h)).

[15] Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Rel. No. 1601 (Dec. 20, 1996) (61 FR 68480 (Dec. 27, 1996)) (''Proposing Release'').

[16] NASAA represents the 50 U.S. state securities agencies responsible for the administration of state securities laws, also known as ''blue sky laws.''

cancellation.[17] To allow the Commission to determine each adviser's status under the Advisers Act, as amended by the Coordination Act, and to provide for the orderly withdrawal from Commission registration of advisers that are no longer eligible, the Commission proposed a transition rule, rule 203A–5.[18] Among other things, rule 203A–5 would require all Commission-registered advisers to make a one-time filing of a new form, Form ADV–T. The Commission is adopting the rule and the form largely as proposed.[19] Paragraph (a) of rule 203A–5 requires all advisers registered with the Commission on July 8, 1997 to file a completed Form ADV–T with the Commission no later than that date.[20] Form ADV–T contains instructions designed to assist an adviser in determining whether it meets the criteria for Commission registration set forth in the Coordination Act and the exemptive rules adopted by the Commission.[21] Form ADV–T requires each adviser to indicate whether it remains eligible for Commission registration. For an adviser that indicates that it is *not* eligible for Commission registration, filing of Form ADV–T serves as the adviser's request for withdrawal from registration as of July 8, 1997.[22] An adviser that does not return the form or that fails to withdraw voluntarily from Commission registration if no longer eligible will be subject to having its registration canceled pursuant to section 203(h).[23]

Form ADV–T is attached as Appendix A to this Release. Shortly after the publication of this Release, the Commission will mail a copy of Form ADV–T to each investment adviser registered with the Commission. In addition to a copy of Form ADV–T, each adviser will receive pre-printed address labels that will assist the Commission in processing the forms. The Commission asks advisers to return the Form ADV–T they receive in the mail using these pre-printed labels.

B. Assets Under Management

In most cases, the amount of assets an adviser has under management will determine whether the adviser will be registered with the Commission or the states. Section 203A(a)(2) of the Advisers Act defines ''assets under management'' as the ''securities portfolios'' with respect to which an investment adviser provides ''continuous and regular supervisory or management services.''[24] Form ADV–T contains instructions that clarify when an account is a ''securities portfolio,'' what services constitute ''continuous and regular supervisory or management services,'' and the appropriate method of valuing the account.[25]

1. Securities Portfolios

The Commission proposed an instruction to Form ADV–T to define a ''securities portfolio'' as any account at least fifty percent of the total value of which consists of securities.[26] Some commenters argued that the fifty percent test was too low and suggested a higher percentage, such as eighty percent. The Commission believes that Congress used the term ''securities portfolio'' to refer to the types of accounts typically managed by investment advisers, which include investments other than securities. The Commission believes that an account fifty percent of the total value of which consists of securities may be fairly characterized as a securities portfolio, and is adopting the fifty percent test substantially as proposed.[27]

Because advisers in the normal course of business maintain portions of client accounts in cash, the Commission proposed that cash and cash equivalents be excluded by an adviser in determining whether an account is a securities portfolio.[28] Two commenters expressed concern that, under the proposal, if securities in a client's account were converted to cash to create a defensive investment position, and the remaining investments in the account were held, for example, in real estate, the account would not be deemed to be a securities portfolio. Such a result, one commenter pointed out, seemed at odds with the purpose of excluding cash when determining whether an account is a securities portfolio. To avoid such a result, the Commission has revised the instruction to permit an adviser to treat cash and cash equivalents as securities for the purpose of determining whether an account is a securities portfolio.[29]

2. Continuous and Regular Supervisory or Management Services

The Commission proposed to provide guidance in an instruction to Form ADV–T for determining whether an adviser provides an account with ''continuous and regular supervisory or management services'' within the meaning of section 203A(a)(2). As proposed, the instruction provided several examples of advisory arrangements and drew conclusions whether the accounts were provided with continuous and regular supervisory or management services. Commenters requested that the Commission provide greater clarity in the instruction, disagreed with some of the conclusions the Commission drew, and provided the Commission with examples of additional arrangements that would and would not receive continuous and regular supervisory or management services.

The Commission has redrafted the instruction in light of the commenters' suggestions. As adopted, Instruction 8(c) to Form ADV–T sets forth general criteria, lists certain factors that should be considered in determining whether the criteria apply to an account, and provides examples designed to apply those criteria and factors. This approach should be more helpful to advisers in determining whether an account is provided continuous and regular supervisory or management services.

Instruction 8(c) states that accounts over which an adviser has discretionary authority and for which it provides ongoing supervisory or management services receive continuous and regular

[17] *See supra* note 14 and accompanying text.

[18] *See* Proposing Release at section II.A.

[19] 17 CFR 275.203A–5; 17 CFR 279.3.

[20] 17 CFR 275.203A–5(a). Although Form ADV–T will not be effective until July 8, 1997, advisers may file Form ADV–T prior to that date. The registrations of advisers that indicate on Form ADV–T that they are no longer eligible to be registered with the Commission will not be withdrawn until July 8, 1997. *See* rule 203A–5(c)(1) (17 CFR 275.203A–5(c)(1)).

[21] *See infra* sections II.B, II.D, and II.E of this Release.

[22] *See* rule 203A–5(c) (17 CFR 275.203A–5(c)); Instruction 6 to Form ADV–T. An adviser that indicates that it is not eligible for Commission registration on Form ADV–T is not required to file separately Form ADV–W (17 CFR 279.2) to withdraw from registration with the Commission. Commission-registered advisers seeking to withdraw their state registrations should contact their state regulators. The Commission will provide NASAA with a copy of each Form ADV–T filed with the Commission.

[23] *See* Instruction 1(f) to Form ADV–T.

[24] 15 U.S.C. 80b–3A(a)(2).

[25] Instruction 8 to Form ADV–T. Several commenters believed that the proposed three-step process for determining assets under management was unnecessarily complex. Each step, however, is contemplated by section 203A(a), which limits assets under management to ''securities portfolios'' with respect to which the adviser provides ''continuous and regular supervisory or management services,'' and requires that the amount of assets under management equal or exceed $25 million for Commission registration.

[26] *See* Proposing Release at section II.B.1.

[27] Instruction 8(a) to Form ADV–T. Real estate, commodities, and collectibles are not securities, and therefore should not be included as securities in determining whether an account meets the fifty percent test.

[28] *See* Proposing Release at section II.B.1.

[29] *See* Instruction 8(a). ''Cash equivalents'' include bank deposits, certificates of deposit, bankers acceptances, and similar bank instruments. Instruction 8(a) *permits*, but does not *require*, cash and cash equivalents to be treated as securities. Because cash and cash equivalents typically comprise a small component of most advisory accounts, the Commission believes that allowing advisers to treat these items as securities will not have a significant effect on the number of advisers that are eligible to register with the Commission.

supervisory or management services. The Commission expects that most discretionary accounts would meet this standard. In addition, a limited number of non-discretionary advisory arrangements may receive continuous and regular supervisory or management services, but only if the adviser ''has an ongoing responsibility to select or make recommendations, based upon the needs of the client, as to specific securities or other investments the account may purchase or sell and, if such recommendations are accepted by the client, is responsible for arranging or effecting the purchase or sale.'' [30] Thus, an advisory relationship under which the adviser does not have discretionary authority must assign to the adviser other responsibilities typically associated with a discretionary account.[31]

Instruction 8(c) provides three factors that advisers should use (and which the Commission will use) in applying these general principles. These factors are the terms of the advisory contract, the form of compensation, and the management practice of the adviser. No single factor is determinative. For example, advisers that provide portfolio management services are typically compensated on the basis of a percentage of the amount of assets under management averaged over some period of time. The use of this type of a compensation arrangement would tend to suggest that the account receives continuous and regular supervisory or management services, although a different compensation arrangement would not preclude that conclusion.

3. Safe Harbor for State-Registered Investment Advisers

The Commission recognizes that section 203A(a)(2) does not and the instructions to Form ADV–T do not provide a ''bright line'' test as to whether a particular arrangement involves the provision of continuous and regular supervisory or management services. The Commission, therefore, is adopting rule 203A–4, which provides a safe harbor from Commission registration for an adviser that is registered with a state securities authority (rather than the Commission) based on a reasonable belief that it is not required to register with the Commission because it does not have sufficient assets under management.[32] Commenters strongly supported the rule's adoption.

Under rule 203A–4, the Commission will not assert a violation of the Advisers Act for failure to register with the Commission (or to comply with the provisions of the Advisers Act to which an adviser is subject if required to register) if the adviser reasonably believes that it does not have sufficient assets under management (at least $30 million) and is therefore not required to register with the Commission.[33] This safe harbor is available only to an adviser that is registered with the state in which it has its principal office and place of business.

4. Valuation and Reporting of Securities Portfolios

Under a proposed instruction to Form ADV–T, once an adviser has determined that an account is a ''securities portfolio'' that receives ''continuous and regular supervisory or management services,'' the entire value of the account would be included in determining the amount of the adviser's assets under management. Several commenters objected to this approach, arguing that only the value of securities should be included as assets under management. The Commission believes that including only the value of securities would be inconsistent with section 203A(a)(2), which requires that ''securities portfolios,'' not ''securities,'' be included in assets under management. The use of the term ''securities portfolios'' rather than ''securities'' suggests that once an account is determined to be a securities portfolio, *all* assets in the account should be included as assets under management.[34]

The Commission is aware that in some cases an adviser may have responsibility for an account only a portion of which receives continuous and regular supervisory or management services. As adopted, Instruction 8(b) to Form ADV–T provides that only the portion of a securities portfolio that receives continuous and regular supervisory or management services may be included as part of the adviser's assets under management.

Under a proposed instruction to Form ADV–T, the value of a securities portfolio would be determined as of a date no more than ten business days before the filing of Form ADV–T. Several commenters said that more time was needed because some advisers obtain information on the value of client accounts from third parties that provide the information on a monthly or quarterly basis.[35] To provide advisers with greater flexibility, the Commission has revised the instruction so that the value of securities portfolios may be determined as of a date no more than 90 days prior to the date Form ADV–T is filed with the Commission.[36]

The Commission proposed that the method by which the accounts are valued for purposes of determining assets under management be the same as that used to value the accounts for purposes of client reporting or to determine fees for investment advisory services. Commenters supported this proposal, which the Commission is adopting substantially as proposed.[37]

C. Transitions Between State and Commission Registration

The Coordination Act contemplates that a state-registered adviser whose assets under management increase to $25 million will withdraw its state registration and register with the Commission. Conversely, an adviser whose assets under management decrease below $25 million will withdraw its Commission registration and register with a state (or states). The Commission proposed to use its rulemaking authority under the Advisers Act, as amended, to reduce the regulatory burdens that may be caused by these transitions.[38]

1. Transition From Commission to State Registration

a. Annual reporting of continued eligibility. The Commission is amending Form ADV by adding new Schedule I (''eye'') that requires advisers to report

[30] *See* Instruction 8(c).

[31] To enable the Commission to evaluate the claims of advisers relying on the non-discretionary management of assets as the basis of eligibility to remain registered with the Commission, Form ADV–T requires these advisers to append a written statement explaining the nature of the non-discretionary supervisory or management services. *See* Part III, Item (c) of Form ADV–T; Instruction 9 to Form ADV–T.

[32] 17 CFR 275.203A–4.

[33] As discussed *infra*, the Commission is increasing the $25 million assets under management threshold for mandatory Commission registration to $30 million, and providing an optional exemption from the prohibition on registering with the Commission for advisers having between $25 and $30 million of assets under management. *See infra* section II.C.2.a of this Release.

[34] In addition, the Commission believes that a requirement that advisers segregate the securities components of an account principally consisting of securities holdings would be unnecessarily burdensome.

[35] Other commenters noted that additional time may be needed to value illiquid securities, closely-held businesses, and other difficult-to-value assets.

[36] Instruction 8(d) to Form ADV–T. Instruction 8(d) does not require all the assets in a securities portfolio to be valued as of the same date. An adviser, however, may not select the dates for valuation of assets so as to maximize (or minimize) the value of the adviser's assets under management. An amount determined by such a method would not, in the Commission's view, reflect the adviser's actual assets under management.

[37] *See* Instruction 8(d).

[38] *See* Proposing Release at section II.C.

information on an ongoing basis similar to that reported on Form ADV–T.[39] Schedule I will be used both to determine whether new applicants are eligible for Commission registration, and to determine whether advisers registered with the Commission continue to be eligible for such registration. Schedule I must be updated annually, within 90 days after the end of the adviser's fiscal year.[40]

The Commission proposed to require advisers to determine and report their assets under management annually in order to reduce the frequency with which advisers are required to change regulators as a result of a decrease in the amount of assets they have under management.[41] Under the proposal, an adviser whose assets under management fell below $25 million would not be required to report this event until after the end of its fiscal year (and not at all unless its assets under management remained below $25 million at the time it filed its Schedule I). Some state commenters asserted that an adviser should be required to withdraw its Commission registration promptly when its assets under management decrease below $25 million, or decrease by some percentage below $25 million. The Commission believes that these approaches could result in some advisers changing regulators too frequently, and is adopting the annual reporting requirement as proposed.[42]

Under rule 204–1(a), a Commission-registered adviser must evaluate and report its continued eligibility for Commission registration once a year. An adviser that reports that it is no longer eligible must withdraw its registration within the 90-day grace period provided by rule 203A–1(c), discussed below, or be subject to a cancellation proceeding under section 203(h).[43]

b. 90-day grace period. An adviser that withdraws from Commission registration will be subject to the registration requirements of one or more states. To allow such an adviser sufficient time to register under applicable state statutes, the Commission proposed to provide a ''grace period'' of 90 days after the date the adviser files its Schedule I indicating that it would not be eligible for Commission registration.[44] Several commenters argued that 90 days was insufficient, while a number of state commenters requested that the 90-day period be shortened, asserting that state registration generally is effected quickly.

In light of these conflicting views, the Commission is adopting the 90-day grace period substantially as proposed.[45] A shorter period may not provide advisers with sufficient time to comply with the registration requirements of multiple states, particularly where the adviser must change its business practices or ensure that its employees prepare for and pass qualification examinations. On the other hand, a longer period may be unnecessary because, as a result of the annual determination of eligibility discussed above, a withdrawing adviser usually will have more than 90 days to come into compliance with state law. The Commission will monitor the operation of the rule and, if necessary, will shorten or lengthen the grace period.

c. Cancellation of Commission registration. Upon the expiration of the grace period, the Commission may institute proceedings to cancel the adviser's registration if it has not yet been withdrawn.[46] As provided under the Advisers Act, the adviser will be given notice and an opportunity to show why its registration should not be cancelled.[47] Upon a showing by the adviser that it requires additional time to comply with state registration requirements, the Commission may stay the cancellation proceeding for a reasonable period, provided that the adviser has made a good faith effort to meet the registration requirements of state law and complied in good faith with the obligation to update Schedule I.

2. Transition From State to Commission Registration

a. The $5 million ''window''. The Commission proposed to make Commission registration optional for an adviser having between $25 and $30 million of assets under management.[48] The proposed rule would permit such an adviser to determine whether and when to change from state to Commission registration. In order to avoid having to de-register shortly after registering with the Commission, an adviser reaching the $25 million assets under management threshold could defer registration with the Commission. The adviser would not be required to register with the Commission until its assets under management reached $30 million, and would not be subject to Commission cancellation of its registration until its assets under management had fallen below $25 million.

Most commenters supported the proposed rule as providing useful flexibility, although some commenters urged that the ''window'' be increased from $5 to $10 million. The Commission is adopting the rule as proposed, but will monitor its operation.[49] If the $5 million window proves to be inadequate to prevent transient registration, the Commission will consider expanding the provision.

b. Registration with the Commission. Under the proposal, a state-registered adviser would have been required to register with the Commission promptly when the adviser's assets under

[39] Schedule I is attached to this Release as Appendix B. For a discussion of the reporting requirements of Form ADV–T, *see supra* sections II.A and II.B and of this Release.

[40] Rule 204–1(a)(1) (17 CFR 275.204–1(a)(1)). As amended, rule 204–1(a) (17 CFR 275.204–1(a) requires advisers to amend Form ADV annually, regardless of whether data reported on the form changes. This annual amendment replaces Form ADV–S, which the Commission is rescinding. Because Form ADV–S is being rescinded, advisers are no longer required to file the written disclosure statement (''brochure'') required by rule 204–3 (17 CFR 275.204–3) with the Commission. The brochure, however, must be maintained as part of the adviser's books and records, and the Commission will continue to review these brochures during investment adviser examinations.

[41] *See* Proposing Release at section II.C.2.

[42] Commission data suggests that most advisers that will remain registered with the Commission have assets under management well in excess of $25 million. It is likely that only a few advisers each year will be required to move from Commission to state registration as a result of a decrease of assets under management, and thus few advisers will be registered temporarily with the Commission prior to reporting a reduced amount of assets under management on Schedule I.

[43] 17 CFR 275.203A–1(c). *See* Instruction 6 to Schedule I. An adviser may withdraw from Commission registration as soon as it is no longer eligible to maintain its registration with the Commission, or it may wait until filing its annual Schedule I to withdraw. An adviser who becomes ineligible for Commission registration for reasons other than the amount of its assets under management also is permitted to wait until filing its annual Schedule I to withdraw.

[44] *See* Proposing Release at section II.C.2. The Commission did not propose a similar grace period in connection with the filing of Form ADV–T. The Commission presumes that an adviser not eligible to maintain its registration with the Commission on July 8, 1997 would already be registered with the appropriate state or states at the time of filing Form ADV–T. *See* Proposing Release at note 43.

[45] Rule 203A–1(c). The Commission is adopting rule 203A–1(c) with a slight revision. Under the rule as proposed, the grace period would have run from the date on which the adviser filed its Schedule I to indicate that it was no longer eligible to maintain its registration. As adopted, however, the grace period begins to run on the date on which the adviser was obligated by rule 204–1(a) to file such amendment. Thus, an adviser could not extend the grace period by failing to timely file Schedule I.

[46] If the adviser amends Schedule I during the grace period to report that it once again has become eligible for Commission registration (for example, because the amount of its assets under management increased since the adviser filed its Schedule I), the Commission will not institute cancellation proceedings.

[47] *See* section 211(c) of the Advisers Act (15 U.S.C. 80b–21(c)); rule 0–5 (17 CFR 275.0–5).

[48] *See* Proposing Release at section II.C.1.

[49] Rule 203A–1 (a), (b) (17 CFR 275.203A–1 (a), (b)).

management reached $30 million.[50] In response to the suggestion of several commenters, the Commission is adopting paragraph (d) to rule 203A–1 to make the transition from state to Commission registration parallel with the transition from Commission to state registration.[51]

Under rule 203A–1(d), certain advisers whose assets under management grow to $30 million may (but are not required to) postpone Commission registration until 90 days after the date the adviser is required to report $30 million or more of assets under management to its state securities authority.[52] If, however, the assets of an adviser relying on the rule are less than $30 million when it registers with the Commission, the adviser's application for registration would not be made effective.

D. Exemptions From Prohibition on Registration With the Commission

Section 203A(c) of the Advisers Act[53] authorizes the Commission to exempt advisers from the prohibition on Commission registration if the prohibition would be ''unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes'' of section 203A of the Act.[54] Pursuant to this authority, the Commission proposed a new rule, rule 203A–2, that would exempt from the prohibition on Commission registration four types of advisers that otherwise would not be eligible for Commission registration. The Commission is adopting rule 203A–2 substantially as proposed. An adviser that meets the conditions of a rule 203A–2 exemption is required by section 203 of the Advisers Act to register with the Commission, unless it qualifies for an exemption from registration under section 203(b) of the Act.[55]

1. Nationally Recognized Statistical Rating Organizations

The Commission proposed to exempt from the prohibition on Commission registration ''nationally recognized statistical rating organizations'' (''NRSROs''), commonly referred to as rating agencies, which are registered with the Commission as investment advisers.[56] The Proposing Release explained that, while NRSROs do not themselves have assets under management, their activities have a significant effect on the national securities markets and the operation of federal securities laws. All commenters addressing this exemption supported it, and the Commission is adopting the exemption as proposed.[57]

2. Pension Consultants

The Commission proposed to exempt from the prohibition on Commission registration pension consultants that provide investment advice to employee benefit plans with respect to assets having an aggregate value of at least $50 million during the adviser's last fiscal year.[58] Pension consultants provide various advisory services to plans and plan fiduciaries, including assistance in selecting and monitoring investment advisers that manage assets of such plans, but may not themselves have assets under management. In the Proposing Release, the Commission explained that the activities of pension consultants have a direct effect on the management of billions of dollars of plan assets, and that it would be inconsistent with the purposes of the Coordination Act for these advisers to be regulated by the states, rather than by the Commission.

Most commenters addressing this exemption supported it, and the Commission is adopting the exemption substantially as proposed.[59] Several commenters raised questions, however, as to the scope of the exemption. The exemption is available to advisers that provide advice to employee benefit *plans*—not to plan *participants.* An adviser that provides advice to plan participants (*e.g.*, regarding the allocation of the participant's contributions in an employee directed defined contribution plan) would not be eligible for the exemption unless the adviser also provides advice to employee benefit plans with respect to $50 million of plan assets.[60] The advice, for example, could concern the funding of a defined benefit plan or the selection of funding vehicles for a defined contribution plan, but would have to be provided to the plan or the plan fiduciary.[61]

Several commenters requested clarification whether the exemption would apply to an investment adviser that provides advisory services to pension plans, but not with respect to ''securities portfolios'' of those plans. These commenters are (or represent) firms that provide advice to plans regarding large real estate investments that are held both directly and indirectly through real estate investment trusts or other investment vehicles. Many of these firms provide advice with respect to plan assets worth hundreds of millions of dollars and are clearly ''large'' enterprises whose activities have an effect on national markets. As used in rule 203A–2(b), the term ''assets of plans'' is not limited to securities portfolios, and thus such investment advisers are eligible for the exemption.

3. Certain Affiliated Investment Advisers

The Commission proposed to exempt from the prohibition on Commission registration advisers that are affiliated with a Commission-registered adviser if the principal office and place of business of the affiliate is the same as

[50] *See* Proposing Release at section II.C.1.

[51] Rule 203A–1(d) (17 CFR 275.203A–1(d)). Rule 203A–1(d) does not affect the operation of the $5 million window. An adviser that has between $25 and $30 million of assets under management is *permitted,* but not *required,* to register with the Commission. Such an adviser may register with the Commission at any time. Rule 203A–1(d) addresses only the question of when an adviser is *required* to register with the Commission.

[52] Rule 203A–1(d) is available only to advisers that are registered in a state that requires Schedule I (or a substantially similar form or rule) to be filed and annually updated. An adviser not registered in such a state must register promptly with the Commission upon reaching $30 million of assets under management. Rule 203A–1(d) is not available to an adviser whose eligibility for registration is based on becoming an adviser to an investment company or becoming eligible for one of the exemptions provided by rule 203A–2 (17 CFR 275.203A–2). *See* section II.D of this Release.

[53] 15 U.S.C. 80b–3A(c).

[54] 15 U.S.C. 80b–3A.

[55] 15 U.S.C. 80b–3, 80b–3(b).

[56] *See* Proposing Release at section II.D.1.

[57] Rule 203A–2(a) (17 CFR 275.203A–2(a)).

[58] *See* Proposing Release at section II.D.2.

[59] Rule 203A–2(b) (17 CFR 275.203A–2(b)). The proposed rule would have exempted pension consultants to employee benefit plans, governmental plans, and church plans, each as defined in the Employee Retirement Income Security Act of 1974 (''ERISA'') (29 U.S.C. 1001), as well as ''(a)ny plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees.'' The Commission has withdrawn this latter category in response to a comment noting that these plans come within ERISA's definition of ''governmental plan.'' The deletion of this category does not affect the scope of the exemption.

[60] Although the Coordination Act provides a $25 million threshold for Commission registration, the Commission is adopting a $50 million threshold for the pension consultant exemption. This higher threshold reflects the fact that a pension consultant has substantially less control over client assets than an adviser that has assets under management. A higher threshold is necessary to demonstrate that a pension consultant's activities have an effect on national markets.

[61] In determining the aggregate value of advised assets, the adviser may include only that portion of a plan's assets for which the adviser provided investment advice (including any advice with respect to the selection of an investment adviser to manage the assets). The value of assets must be determined as of the date during the adviser's most recently completed fiscal year that the adviser was last employed or retained by contract to provide investment advice to the plan or plan fiduciary with respect to those assets. *See* rule 203A–2(b)(3) (17 CFR 275.203A–2(b)(3)).

that of the registered adviser.[62] In proposing the exemption, the Commission explained that when the activities of affiliated advisers are centrally managed, subjecting them to different regulatory schemes would be burdensome and inefficient.

Most commenters that addressed this exemption supported it, stating that Commission registration of affiliated advisers would be more efficient. Many, however, urged that the availability of the exemption not be limited to advisers having the same principal office. In particular, some commenters suggested that the exemption be expanded to permit Commission registration of affiliated advisers whose compliance or books and records systems are integrated with those of a Commission-registered adviser.

The Commission is not expanding the exemption as suggested because it is concerned that such an expansion could result in Commission registration of a large number of small, locally operated advisers, which Congress intended to be registered with the states.[63] The Commission understands that, as a result, some advisers whose operations are integrated with those of a Commission-registered adviser will be prohibited from registering with the Commission.[64] The Commission will entertain requests for exemptive relief from these advisers on a case-by-case basis under section 203A(c), and may consider expanding the exemption if experience suggests expansion would be appropriate.

Under rule 203A–2(c) as adopted, an adviser that controls, is controlled by, or is under common control with an adviser eligible to register (and in fact registered) with the Commission must register with the Commission if the two advisers have the same principal office and place of business.[65] The rule defines ''control'' as the power to direct or cause the direction of the management or policies of an adviser, whether through ownership of securities, by contract, or otherwise.[66]

4. Investment Advisers With Reasonable Expectation of Eligibility

The Commission proposed an exemption to permit a newly formed adviser to register with the Commission at the time of its formation if the adviser has a reasonable expectation that within 90 days it will become eligible for Commission registration.[67] All commenters addressing this exemption supported it. Many, however, urged the Commission to give newly formed advisers a longer period than 90 days to become eligible for Commission registration. Some pointed out that even if the start-up adviser has obtained commitments from prospective clients for more than $25 million of assets, it may take more than 90 days for clients (particularly institutional clients) to transfer their assets to the adviser. To address this concern, the rule as adopted allows for a period of 120 days.[68]

Under rule 203A–2(d), an adviser is exempt from the prohibition on Commission registration if, at the time of registration, it is not registered (or required to be registered) with the Commission or any state and has a reasonable expectation that it would be eligible for Commission registration within 120 days after the date its registration becomes effective.[69] At the end of the 120-day period, the adviser is required to file an amended Schedule I.[70] If the adviser indicates on the amended Schedule I that it has not become eligible to register with the Commission (*e.g.*, it does not have at least $25 million of assets under management), the adviser is required to file a Form ADV–W concurrently with the Schedule I, thereby withdrawing from registration with the Commission.[71]

5. Advisers to ERISA Plans

Many investment advisers provide advice to employee benefit plans governed by the Employee Retirement Income Security Act of 1974 (''ERISA''). ERISA protects a plan's named fiduciary from liability for the individual decisions of an investment manager appointed by the fiduciary to manage the plan's assets.[72] The term investment manager is defined by ERISA to include certain investment advisers registered under the Advisers Act, as well as certain banks and insurance companies.[73] Although the Coordination Act amended ERISA to include state-

[62] *See* Proposing Release at section II.D.3.

[63] This could occur as a result of the National Association of Securities Dealers' (''NASD'') requirement that its member broker-dealer firms supervise and keep books and records regarding certain private securities transactions of their registered representatives who also are registered individually as investment advisers. *See* NASD Notice to Members No. 94–44 (May 1994); *see also* NASD Notice to Members No. 96–33 (May 1996). Many of these broker-dealer firms are themselves registered investment advisers that will remain eligible for Commission registration after July 8, 1997. In some cases, a firm's registered representatives form a large network of individually registered investment advisers that use a broker-dealer firm to effect certain securities transactions on behalf of advisory clients. A broker-dealer firm's compliance with the obligation to supervise both its own trades and those that are effected through unaffiliated broker-dealers may result in its control of these registered advisers. Under the commenters' suggested approach, this control, together with the books and records the NASD requires, might qualify each individually registered adviser for the exemption, even though each such adviser has only a small, local business and would not otherwise be eligible for Commission registration.

[64] Of course, an adviser may choose to register its affiliates under its registration as a single registrant. If the adviser and its affiliates have aggregate assets under management of $25 million or more, the registrant would meet the threshold for Commission registration, regardless of whether the operations of the adviser and the affiliates are integrated.

[65] 17 CFR 275.203A–2(c). The definition of principal office and place of business in rule 203A–3(c) (17 CFR 275.203A–3(c)) applies to this rule. *See infra* section II.E.2 of this Release. The Commission will consider a Commission-registered adviser and an affiliated adviser to have the same principal office and place of business if the principal office of the affiliate is in the proximate geographic area as the principal office of the registered adviser.

[66] In the Proposing Release, the Commission explained that by proposing rule 203A–2(c), it did not intend to suggest that an advisory firm may reorganize its operations in order to circumvent the requirements of the Advisers Act. *See* Proposing Release at note 54. Thus, for example, an adviser may not avoid application of the Advisers Act by creating a state-registered affiliate that is not separately and independently organized.

[67] *See* Proposing Release at section II.D.4.

[68] Rule 203A–2(d) (17 CFR 275.203A–2(d)). Some commenters also asked for clarification as to what constitutes a ''reasonable expectation.'' In proposing the exemption, the Commission anticipated that it would be used primarily by persons who start their own advisory firms after having been employed by or affiliated with other advisers, and that have received an indication from clients with substantial assets that they will transfer those assets to the management of the newly formed adviser. In such a case, an adviser would have a ''reasonable expectation'' that it would become eligible for Commission registration in the prescribed time. Other circumstances, however, also could support an adviser's reasonable expectation of becoming eligible.

[69] The requirement that the adviser not be registered or required to be registered with the Commission or any state is designed to ensure that the exemption is available only to start-up advisers. This requirement must be met at the time the adviser registers with the Commission. Rule 203A–2(d)(1) (17 CFR 275.203A–2(d)(1)). A newly formed adviser that registers with the Commission in reliance on this exemption, however, subsequently may register with a state or states during the 120-day period in anticipation of failing to become eligible for Commission registration.

[70] Rule 203A–2(d)(3) (17 CFR 275.203A–2(d)(3)).

[71] *Id.* When registering with the Commission, an adviser relying on this exemption must include on Schedule E to Form ADV an undertaking to withdraw from registration if, at the end of the 120-day period, the adviser would be prohibited from registering with the Commission. Rule 203A–2(d)(2) (17 CFR 275.203A–2(d)(2)). An adviser required by rule 203A–2(d)(3) to withdraw from Commission registration at the end of the 120-day period will not have available the additional 90-day grace period provided by rule 203A–1(c) in which to effect the appropriate state registrations.

[72] Section 405(d)(1) of ERISA (29 U.S.C. 1105(d)(1)). *See* 29 CFR 2509.75–8 (Department of Labor regulations providing interpretative guidance on ability of plan fiduciaries to delegate management and control of plan assets to other persons under ERISA).

[73] Section 3(38) of ERISA (29 U.S.C. 1002(38)). *See* 29 CFR 2509.75–5 (Department of Labor regulations providing interpretative guidance on definition of ''investment manager'' under ERISA).

registered investment advisers as investment managers, that amendment expires two years after enactment, on October 11, 1998.[74]

Several commenters urged the Commission to use its authority under the Coordination Act to exempt advisers that manage accounts subject to ERISA. These commenters expressed concern that unless they were permitted to remain registered with the Commission, they effectively would be denied the ability to manage ERISA accounts and would be harmed competitively.

Although the Commission shares these commenters' concerns, the Commission believes such an exemption would be inconsistent with the purposes of the Coordination Act and outside the scope of the Commission's authority. As described above, the grant of exemptive authority in section 203A(c) was designed to permit Commission registration of advisers that are larger, national firms, but do not have $25 million of assets under management. An exemptive rule conditioned solely on the management of assets of accounts subject to ERISA could exempt a large number of small, locally operated advisers.[75] In the Commission's view, in order for such a rule not to be anti-competitive, the rule would have to exempt all advisers that propose to serve clients regulated under ERISA. If not, the rule would preclude advisers from entering that market. Thus, such an exemption could result in most smaller advisers remaining registered with the Commission—completely frustrating a principal purpose of the Coordination Act.[76]

On April 7, 1997, Chairman Levitt wrote to the leadership of the Congressional committees with jurisdiction over ERISA, urging that legislation be enacted eliminating the ''sunset'' provision in the Coordination Act, thus making permanent the amendment of ERISA that permits state-registered advisers to serve as investment managers.[77]

E. Investment Advisers Not Regulated or Required To Be Regulated by States

Under section 203A(a)(1) of the Advisers Act, advisers that are not regulated or required to be regulated as investment advisers in the state in which they have their principal office and place of business must register with the Commission regardless of the amount of assets they have under management.[78] This provision makes clear that the Commission will retain regulatory responsibility for an adviser with a principal office and place of business in a state that has not enacted an investment adviser statute,[79] and for foreign advisers doing business in the United States. The Coordination Act, however, does not provide an explanation of when an adviser is ''regulated or required to be regulated'' as an investment adviser, nor does it define ''principal office and place of business.''

1. ''Regulated or Required To Be Regulated''

Under the proposal, the Commission would have interpreted the phrase ''regulated or required to be regulated'' in section 203A(a)(1) to mean ''registered'' with a state.[80] Under this interpretation, an investment adviser exempt from registration with the state in which it has its principal office and place of business would be eligible for registration with the Commission, even if it has less than $25 million of assets under management.

Most commenters that addressed this issue, including several state commenters, supported the Commission's proposed interpretation. These commenters expressed concern that an alternative interpretation under which an adviser would be deemed ''regulated'' by a state if that state has in effect an investment adviser statute would result in a regulatory ''gap'' that leaves clients of advisers exempt from state registration and below the threshold for Commission registration at risk. Two commenters, however, objected to the proposed interpretation. One of these commenters argued that the proposed interpretation would be inconsistent with the goal of the Coordination Act, which was to make the Commission primarily responsible for larger advisers with national businesses and the state primarily responsible for smaller advisers. This commenter also disagreed with the reading of the legislative history of the Coordination Act reflected in the Proposing Release. According to the commenter, the legislative history supports the view that all advisers with a principal office in a state that has *enacted* a statute regulating advisers are prohibited from registering with the Commission if they do not meet the criteria for Commission registration.

These comments have caused the Commission to reconsider its proposed interpretation. As discussed above, the legislative history of the Coordination Act makes clear that Congress intended the Coordination Act to result in the Commission regulating larger advisers and the states regulating smaller advisers.[81] The proposed interpretation, however, would result in the Commission being responsible for a large number of very small advisers that are not registered under state law because they qualify for state de minimis exemptions. It would be inconsistent with the purposes of the Coordination Act for the Commission to retain responsibility for advisers whose business activities states have determined are so limited that they do not warrant their regulatory attention. The proposed interpretation also would seem to frustrate the purpose of the Coordination Act to limit significantly the number of advisers registered with the Commission, since it would permit a substantial number of very small advisers to remain registered with the Commission.[82]

The Commission believes a better interpretation of section 203A(a)(1) is that an adviser is ''regulated or required to be regulated'' in the state in which it has its principal office and place of business if that state has enacted an investment adviser statute.[83] Such a state has asserted its interest in regulating investment advisers. While a state may provide for exemptions from its registration requirements or exceptions to its definition of investment adviser, it does not thereby delegate regulatory responsibility for

[74] Section 308(b) of the Coordination Act.

[75] To reflect Congress' intent that the Commission regulate only large, national advisers, the Commission's exemption for pension consultants is conditioned on the pension consultant's management of over $50 million of plan assets. *See supra* note 60.

[76] The Commission also believes its authority to exempt advisers to ERISA plans is circumscribed by the express Congressional determination that the amendment to ERISA provided in the Coordination Act expire after two years.

[77] Letters from Arthur Levitt, Chairman, SEC (Apr. 7, 1997) to The Honorable James M. Jeffords, Chairman, Committee on Labor and Human Resources, U.S. Senate, and The Honorable William F. Goodling, Chairman, Committee on Education and the Work Force, U.S. House of Representatives (available in SEC File No. S7–31–96).

[78] 15 U.S.C. 80b–3A(a)(1). The term ''state'' is defined in section 202(a)(19) of the Advisers Act (15 U.S.C. 80b–2(a)(19)) to include the District of Columbia, Puerto Rico, the Virgin Islands, and any other possession of the United States.

[79] As discussed *supra* note 7, Colorado, Iowa, Ohio, and Wyoming currently do not have investment adviser statutes.

[80] *See* Proposing Release at section II.E.1.

[81] *See supra* notes 4 and 5 and accompanying text.

[82] One commenter stated that it believes that there are 600 such advisers in New York alone. The proposed interpretation also seems inconsistent with the goal of the Coordination Act to reduce regulatory burdens, since it could require a start-up adviser to first register with the Commission, then move to state registration as it outgrows the state de minimis exemption, and later, if it continues to grow, return to Commission registration.

[83] *See supra* note 7 and accompanying text.

such advisers to the Commission.[84] Upon reconsideration, the Commission believes the Coordination Act's legislative history supports this position.[85]

State commenters supporting the Commission's proposed interpretation argued that Congress intended to eliminate regulatory overlap, not to create a regulatory ''gap'' in which some advisers are left unregulated. Even under the proposed interpretation, however, advisers that qualify for registration exemptions under both federal and state law would continue to be unregulated, and thus it is difficult to draw any conclusions from the fact that some advisers will not be registered. To the extent there is a ''gap,'' the Commission believes that it is more consistent with the Coordination Act for the gap to be closed by the states, which are given primary responsibility for regulating advisers that are not eligible for Commission registration.

2. ''Principal Office and Place of Business''

The Commission is adopting, as proposed, a new rule to define the term ''principal office and place of business'' to mean the ''executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.'' [86]

F. Persons Who Act on Behalf of Investment Advisers

In addition to preempting state law with respect to investment advisers registered with the Commission, the Coordination Act preempts state law with respect to their ''supervised persons.'' [87] A supervised person is defined as any ''partner, officer, director * * *, or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.'' [88]

The Coordination Act preserves certain state laws with respect to certain supervised persons of Commission-registered advisers by providing that a ''State may license, register, or otherwise qualify any investment adviser representative who has a place of business located within that State.'' [89] The Coordination Act does not define ''investment adviser representative,'' nor does it describe what constitutes a ''place of business.'' In order to provide clarification, the Commission is adopting definitions of these terms. The Commission also is providing guidance as to the status of solicitors for Commission-registered advisers.

1. ''Investment Adviser Representative''

Rule 203A–3(a), as adopted, defines the term ''investment adviser representative'' to mean a supervised person more than ten percent of whose clients are natural persons.[90] Natural persons who have at least $500,000 under management with the adviser representative's investment advisory firm immediately after entering into the advisory contract with the firm, or who the advisory firm reasonably believes have a net worth in excess of $1 million (together with assets held jointly with a spouse) immediately prior to entering into the advisory contract, are not counted towards the ten percent threshold.[91] Supervised persons who do not, on a regular basis, solicit, meet with, or otherwise communicate with clients of the investment adviser, or who provide only impersonal investment advice, are excluded from the definition of investment adviser representative.[92]

The Commission received extensive comment on the proposed definition of investment adviser representative. Most investment adviser commenters asserted that it was important for the Commission to adopt a single definition of the term in order to effect the purpose of Congress in creating a more uniform, rational system of adviser regulation. NASAA and most of the states opposed the adoption of any Commission definition, arguing that (i) the Commission has no authority to define the term, (ii) Congress intended for the states to define the term, and (iii) the states have already defined the term.

There is no contemporaneous legislative history explaining what Congress meant by the term investment adviser representative in section 203A(b)(1)(A).[93] The definition of investment adviser representative varies substantially from state to state.[94] As a result, the incorporation of state law would conflict with one of the primary goals of the Coordination Act, which is to promote uniformity of regulation.[95] Likewise, the incorporation of state law would be at odds with Congress' determination to preempt state laws regulating the offering of mutual fund shares,[96] as state investment adviser representative definitions generally encompass persons who provide

[84] If a state repeals its investment adviser statute, the Commission will assume regulatory responsibility for all investment advisers with a principal office and place of business in that state.

[85] The Senate Report explains that the Commission ''will continue to supervise all advisers that are based in a state that does not register investment advisers.'' Senate Report, *supra* note 4, at 4. The Proposing Release and a number of commenters cited this sentence for the proposition that an adviser is regulated by a state if it is registered with that state. *See* Proposing Release at note 59 and accompanying text. In context, however, it appears that the sentence means that the Commission will retain regulatory responsibility for small advisers in states that do not register *any* advisers.

[86] Rule 203A–3(c).

[87] Section 203A(b)(1)(A) of the Advisers Act [15 U.S.C. 80b–3A(b)(1)(A)].

[88] Section 202(a)(25) of the Advisers Act (15 U.S.C. 80b–2(a)(25)).

[89] Section 203A(b)(1)(A).

[90] 17 CFR 203A–3(a).

[91] Rule 203A–3(a)(3)(i) (17 CFR 275.203A–3(a)(3)(i)). *See infra* notes 110–112 and accompanying text.

[92] Rule 203A–3(a)(2) (17 CFR 275.203A–3(a)(2)). *See infra* section of this Release.

[93] The House bill, H.R. 3005, 104th Cong., 2d Sess. (1996), did not, in its original form, address the regulation of investment advisers. The Senate bill, which is the source of the Coordination Act, preempted state qualification requirements with respect to Commission-registered advisers and, as originally introduced, their *employees. See* S. 1815, 104th Cong., 2d Sess. section 103 (1996). The provision preserving state authority over investment adviser representatives was added by the conference committee. The ''Joint Explanatory Statement of the Committee of Conference,'' however, states only that ''[t]he Managers agreed to include certain amendments to the Investment Advisers Act of 1940 to eliminate duplication, promote efficiency, and protect investors.'' H.R. Conf. Rep. No. 864, 104th Cong., 2d Sess. 41 (1996), *reprinted in* 1996 U.S.C.C.A.N. 3920, 3922. The debates in Congress that preceded final adoption of the bill reported by the conference committee note only that the states were given authority under the bill to continue to regulate ''investment adviser representatives.'' 142 Cong. Rec. H12,047–01, H12,050 (daily ed. Sept. 28, 1996) (statement of Rep. Markey) (''At the same time, we agreed that the States should continue to have authority to license the individual representatives of investment advisers.'').

[94] Although most states that require registration of investment adviser representatives have patterned their definition of investment adviser representative on the NASAA model definition, *see* Unif. Sec. Act section 401(g) (1986), many have modified this definition, both legislatively and administratively, to include, for example, any person: who holds himself out as an investment adviser (Md. Code Ann., Corps & Ass'ns section 11–101(g)(vii) (1993)); who deals directly with clients of the investment adviser (Arkansas Blue Sky Rule 102.01); or who prepares reports or analyses concerning securities (Okla. Stat. Ann. tit. 71 section 2(l) (West Supp. 1997); Va. Code Ann. section 13.1–501(A) (1993); Definitions and Procedures for Investment Advisor Representatives and Branch Offices (Order of Deputy Commissioner of Securities, West Virginia Securities Division, May 25, 1993, amended eff. Oct. 11, 1995)).

[95] *See* Senate Report, *supra* note 4, at 4 (''Larger advisers, with national businesses, should be * * * subject to national rules.'').

[96] *See* 1996 Act section 102 (amending section 18(b)(2) of the Securities Act of 1933 [(15 USC 77r(b)(2)] to preempt state laws requiring registration of securities issued by investment companies that are registered or that have filed a registration statement with the Commission); Senate Report, *supra* note 4, at 6–7; H. Rep. No. 622, 104th Cong., 2d Sess. 30–31 (1996) [hereinafter House Report].

advisory services to mutual funds.[97] Incorporation of state law also would be inconsistent with Congress' intention to limit the application of state law to at least some supervised persons. If a state adopted a sufficiently broad definition of the term investment adviser representative, the Coordination Act would have no preemptive effect, since all supervised persons would be subject to state licensing, registration, or qualification (hereinafter, ''state qualification requirements.'')[98]

The Coordination Act does not contain any direction to incorporate state law. In light of the many provisions in the 1996 Act designed to promote uniformity of regulation, the decision of Congress to preempt state mutual fund regulation, and the preemptive language used by Congress, the Commission does not believe that Congress intended the definition of investment adviser representative to incorporate state law. Rather, the Commission believes that Congress left the term investment adviser representative undefined with the expectation that the Commission would use its rulemaking authority to define the term.

The Commission's authority to adopt a rule classifying certain supervised persons as investment adviser representatives is clear.[99] The ambiguities created by Congress' use of the undefined term investment adviser representative make it important that the Commission, as the federal agency charged with administering the Advisers Act, define the term so that the substantial uncertainties and costly disputes likely to occur in the absence of such a definition may be avoided.[100] Only by adopting a uniform, national definition of investment adviser representative can Congress' intent to ''delineate more clearly the securities law responsibilities of federal and state governments'' be achieved.[101]

a. Retail clients. As discussed above, Congressional committee reports provide no indication as to which persons providing investment advice on behalf of Commission-registered advisers Congress intended states to continue to register.[102] Therefore, in developing its proposed definition, the Commission examined testimony Congress received in support of preserving state authority over investment adviser representatives of Commission-registered advisers.[103] Testimony offered by NASAA urged Congress to permit states to establish qualification standards for investment adviser representatives to protect ''retail'' investors.[104] The Commission assumed that this testimony persuaded Congress to preserve state authority over such persons, and proposed to define the term investment adviser representative in a manner consistent with the policy concerns expressed in the testimony.[105]

Under the proposed definition, investment adviser representative would mean a supervised person of an investment adviser, if a substantial portion of the business of the supervised person is providing investment advice to clients who are natural persons. The proposed definition thus drew a distinction between natural persons, whom the Commission considered to be ''retail investors,'' and investment companies, businesses, educational institutions, charitable institutions, and other types of clients. Under the proposed definition, most investment adviser representatives who provide advice primarily to natural persons would be subject to state qualification requirements.

Commenters were divided over whether the definition should distinguish between retail and other types of clients. Many state commenters opposed this distinction, arguing there was no basis in the Coordination Act or its legislative history for limiting state oversight to adviser representatives that serve retail clients.[106] Many of these commenters referred to the example of an adviser representative who provides advisory services to small businesses as the type of supervised person that should be subject to state qualification requirements. In contrast, many investment adviser commenters supported the distinction, arguing that it was consistent with the legislative history cited by the Commission in the Proposing Release. Several of these commenters also urged the Commission to treat certain ''high net worth'' clients as institutional clients.

The Commission continues to believe that it is consistent with the intent of Congress as reflected in the structure and purpose of the Coordination Act to distinguish between retail and other clients in defining the term investment adviser representative. While there are other possible criteria for distinguishing retail clients from other clients,[107] the Commission believes that treating natural persons as retail clients is consistent with the Coordination Act and has the advantage of simplicity and ease of administration.[108]

[97] The NASAA model definition of investment adviser representative includes any employee (except clerical or ministerial personnel) of an investment adviser who ''manages accounts or portfolios of clients.'' *See* Unif. Sec. Act section 401(g)(2) (1986). Most states that define investment adviser representative include this provision in their definitions. *See, e.g.,* Md. Code Ann., Corps. & Ass'ns, section 11–101(g)(1)(v) (1993); Mass. Gen. Laws Ann. ch. 110A, section 401(n) (West Supp. 1996); Nev. Rev. Stat. section 90.278(1)(d) (Michie Supp. 1995).

[98] Thus, such a definition would have the effect of reading out of the Coordination Act the provision in section 203A(b)(1)(A) preempting state qualification requirements as to supervised persons of Commission-registered advisers, violating the principle of statutory interpretation that a statute is to be construed so as to give effect to all of its language. *See, e.g., United States* v. *Menasche,* 348 U.S. 528, 538–39 (1955).

[99] Section 211(a) of the advisers Act (15 USC 80b–21(a)) authorizes the Commission to adopt rules ''as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission'' in the Advisers Act and to ''classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters.'' Section 202(a)(17) of the Advisers Act (15 U.S.C. 80b–2(a)(17)) authorizes the Commission to adopt rules that ''classify, for the purposes of *any* portion * * * of (the Advisers Act), persons, including employees controlled by an investment adviser'' (emphasis added).

[100] Even if the Commission did not have the explicit grants of rulemaking authority discussed *supra* in note 99, the Supreme Court has recognized that regulatory agencies have authority to adopt rules to fill any gap left, implicitly or explicitly, by Congress, *see Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 843–44 (1984), and that agency rulemaking may preempt state law, *see City of New York* v. *Federal Communications Commission,* 486 U.S. 57, 63–64 (1988). The Commission notes that Congress specifically anticipated that Commission rulemaking would preempt state law. Section 203A(c) permits the Commission to exempt advisers from the prohibition on Commission registration, thereby preempting state law with respect to the exempted advisers.

[101] *See* Senate Report, *supra* note 4, at 2.

[102] *See supra* note 93.

[103] *See* Proposing Release at note 68 and accompanying text.

[104] *See* Senate Hearing, *supra* note 4, at 125 (testimony of Dee R. Harris, President, NASAA). *See also id.* at 178 (statement of Steven M.H. Wallman, Commissioner, SEC (''My concern is with the treatment of associated persons of (investment adviser) firms who provide advice to *retail* customers.'' (emphasis in original))).

[105] *See* Proposing Release at section II.F.1.

[106] Some of these commenters asserted that the Commission mischaracterized the *intent* of NASAA in referring to ''retail'' investors in its testimony. The Commission, however, did not base the proposed rule on the intent of NASAA in giving its testimony, but rather, on what the members of the Senate committee receiving NASAA's testimony (and the other members of Congress reviewing the legislative record) are reasonably likely to have believed NASAA's position was at the time of its testimony.

[107] Dictionaries typically define ''retail'' as the sale in small quantities to consumers. *See, e.g.,* Webster's II New Riverside University Dictionary 1003 (1994). Such a definition is not helpful in this context because, depending on who is viewed as the ''consumer'' of the advice, it leads to a conclusion either that *all* businesses are retail clients (because they are obtaining advice for their own portfolios), or that *no* businesses are retail clients (because the ultimate beneficiaries of the advice are the owners of the businesses).

[108] Requiring adviser representatives to determine whether a client is a ''small business'' would

Continued

Although small businesses may not be familiar with investing, they must be familiar with selecting qualified service providers, suppliers, and other parties with which they contract as a part of their businesses. Small businesses will receive a brochure setting forth the business and educational background of prospective advisers and will have the opportunity to make an informed decision whether the advisers are qualified.[109] Because adviser representatives providing advice to small businesses also typically provide advice to individual investors, it is unlikely that the Commission's decision to treat only natural persons as retail clients will have a significant effect on the number of adviser representatives subject to state qualification requirements.

As suggested by several commenters, the Commission is modifying the rule to permit adviser representatives to exclude certain ''high net worth'' individuals from treatment as natural persons. Under the rule, high net worth individuals are those with whom the Commission permits advisers to enter into a ''performance fee contract.'' [110] Because of their wealth, financial knowledge, and experience, the Commission has presumed that these individuals are less dependent on the protections of the provisions of the Advisers Act that prohibit such fee arrangements.[111] The Commission believes that such individuals similarly do not need the protections of state qualification requirements. Because of the historical treatment of wealthy and sophisticated individuals under the federal securities laws, Congress reasonably could have expected these persons not to be considered retail investors.[112]

b. Accommodation clients. The Commission proposed to include in the definition of investment adviser representative only those supervised persons a ''substantial portion'' of whose business is providing advice to natural persons.[113] A substantial portion of a supervised person's business would be providing advice to natural persons if, during the preceding twelve months, more than ten percent of the supervised person's clients consisted of natural persons, or more than ten percent of the assets under management by the adviser attributable to the supervised person were assets of clients who are natural persons (the ''ten percent allowance'').

Most commenters that addressed the proposed ten percent allowance supported it. Some investment adviser commenters urged the Commission to increase the allowance to 25 percent. The Commission is adopting the ten percent allowance substantially as proposed. The Commission believes that increasing the allowance to 25 percent could result in supervised persons accepting natural person clients on more than just an accommodation basis. The Commission notes, however, that the exclusion of certain high net worth individuals from the ten percent allowance likely will have the effect of expanding the number of accommodation clients an adviser representative may accept.[114]

Under the proposed rule, the ten percent allowance would have been measured either by reference to assets under management attributable to the supervised person (''asset test'') or by reference to clients of the supervised person (''client test''). Commenters believed that these tests were too complicated and that the client test alone was sufficient. No commenters came forth, as the Commission had requested, with suggestions for making the asset test workable.[115] The Commission is not adopting the asset test, but is concerned that, as a result, an adviser representative who works on one or a few institutional or business client accounts may not be able to accept any accommodation clients because, if she did, more than 10 percent of her clients would consist of natural persons. The Commission directs the staff to work with investment advisers whose adviser representatives may be so affected. If a workable method of addressing this concern is developed, the Commission will revise the definition of investment adviser representative.

The Commission also has revised the method of measuring the ten percent allowance. As proposed, the allowance would have been measured over the previous twelve month period. The Commission believes that the proposed approach is too complicated and would inappropriately delay the applicability of state qualification requirements.[116] As adopted, therefore, the rule requires a supervised person to determine compliance with the ten percent allowance at all times, with respect to current clients.[117]

The Commission recognizes that some advisory firms consider each person to whom the firm provides advisory services to be a client only of the firm and not of any individual supervised person. The Commission believes that such an approach would be inconsistent with the Coordination Act, and thus a client also should be treated as a client of a supervised person if the supervised person has substantial responsibilities with respect to the client's account or communicates advice to the client. If more than one supervised person provides advice to a client, the client should be attributed to each supervised person.

c. Supervised persons providing indirect or impersonal advice. The

complicate the definition and create uncertainty as to the applicability of state qualification requirements. If small businesses were treated as retail persons, adviser representatives presumably would have to obtain income statements and/or balance sheets from their small business clients, and might be required to determine whether the income or assets of a small business client should be aggregated with the client's parent or affiliate in order to determine whether state qualification requirements apply.

[109] Rule 204–3 requires Commission-registered investment advisers to provide existing and prospective clients with a written disclosure statement describing the adviser's services and fees, investment methods and strategies, and education and business background, as well as other information. *See* Part II of Form ADV.

[110] *See* rule 205–3 (17 CFR 275.205–3).

[111] *See* Investment Advisers Act Rel. No. 966 (Nov. 14, 1985) (50 FR 48556 (Nov. 26, 1985)) (adopting rule 205–3). Rule 205–3 permits a registered investment adviser to be compensated on the basis of a share of the capital gains on or capital appreciation of client assets. *See infra* section II.I.3 of this Release. Compensation of this type is prohibited by section 205(a)(1) of the Advisers Act (15 U.S.C. 80b–5(a)(1)) with certain limited exceptions.

[112] This conclusion is supported by the determination by Congress in section 205(e) of the Advisers Act (15 U.S.C. 80b–5(e)) to broaden the authority of the Commission to permit advisers to enter into performance fee contracts with these persons.

[113] *See* Proposing Release at section II.F.1.

[114] *See supra* notes 110–112 and accompanying text.

[115] For example, an asset test would have to provide guidance on how to attribute assets managed by the adviser to a particular supervised person.

[116] For example, a supervised person who previously provided advisory services exclusively to institutional clients and who is reassigned to retail clients could not have been required, under the proposed rule, to comply with state qualification requirements for up to a year after being reassigned to retail clients, because the supervised person would not have been deemed to be an investment adviser representative until retail clients represented 10 percent of his clientele over a 12 month period. Conversely, an investment adviser representative who previously provided advice to retail clients and who is reassigned to institutional clients could have been required to continue to meet state qualification requirements even though she no longer had retail clients, because under the proposed rule, she would have continued to be an investment adviser representative until retail clients represented less than 10 percent of her clientele over a 12 month period.

[117] Rule 203A–3(a)(1) (17 CFR 275.203A–3(a)(1)). The client test is measured with respect to all of an adviser representative's clients nationwide. Supervised persons may rely on the definition of ''client'' in rule 203(b)(3)–1 (17 CFR 275.203(b)(3)–1) for the purpose of counting clients, except that supervised persons need not count clients that are not U.S. residents. Rule 203A–3(a)(4) (17 CFR 275.203A–3(a)(4)).

Commission also is adopting an exception from the definition of investment adviser representative for supervised persons who provide advice to natural persons, but who do not ''on a regular basis solicit, meet with, or otherwise communicate with clients.'' [118] This exception excludes from state qualification requirements personnel of an adviser who may be involved in the formulation of investment advice given to natural persons, but who are not directly involved in providing advice to (or soliciting) clients. In addition, the Commission is excepting supervised persons who give only impersonal investment advice.[119] This provision excludes personnel who may be involved, for example, in preparing a newsletter, providing general market timing advice, or preparing a list of recommended purchases for inclusion on a web site. No commenters specifically addressed these provisions, which are being adopted substantially as proposed.

d. Dually registered investment adviser representatives. The Proposing Release requested comment whether an investment adviser representative that is dually registered as a broker-dealer agent in a state should be excepted from the definition of investment adviser representative.[120] A number of investment adviser commenters expressed support for such an exception, arguing that state investment adviser representative registration of registered broker-dealer agents is redundant. Many state and other commenters strongly opposed such an exception, asserting that it would be inappropriate to treat investment adviser representatives and broker-dealer agents the same since they perform different functions, are subject to different state examination requirements,[121] and are governed by different regulations and fiduciary standards. The Commission agrees, and the rule, as adopted, provides no exception for dually registered broker-dealer agents.

e. Solicitors. In the Proposing Release, the Coordination Act was interpreted as not generally preempting state regulation of solicitors for Commission-registered advisers.[122] Several commenters disagreed with this interpretation and asserted that if a solicitor is an employee of the adviser for which he or she solicits, the Coordination Act preempts state law unless the solicitor is an investment adviser representative. The Commission agrees, and is revising this interpretation.

Section 203A(b) preempts state regulation of ''supervised persons'' of Commission-registered advisers, except those who are investment adviser representatives. Whether a solicitor for a Commission-registered adviser is subject to state qualification requirements thus turns, first, on whether the solicitor is a supervised person, and second, on whether he or she is an investment adviser representative. A supervised person is defined in section 202(a)(25) to be (i) any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or (ii) any other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser. Because solicitation of clients may not involve providing investment advice on behalf of the adviser, the status of a solicitor as a supervised person will depend on the whether the solicitor is a ''partner, officer, director, or employee'' of the adviser, or an ''other person.'' [123]

A solicitor who is a partner, officer, director, or employee of a Commission-registered adviser is a supervised person, and is subject to state qualification requirements only if the solicitor is an investment adviser representative under rule 203A–3(a). A third-party solicitor for a Commission-registered adviser (*i.e.*, a solicitor who is not a partner, officer, director, or employee of the adviser) is not a supervised person *unless* the solicitor provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the adviser. [124] Thus, a third-party solicitor will be subject to state qualification requirements to the extent state investment adviser statutes apply to solicitors. [125] In some cases, a solicitor may solicit on behalf of both a state-registered adviser and a Commission-registered adviser. The Commission believes that the Coordination Act does not preempt states from subjecting such a solicitor to state qualification requirements.

2. ''Place of Business''

While section 203A(b)(1)(A) preserves the ability of a state to license, register, or otherwise qualify investment adviser representatives of Commission-registered advisers, the section limits a state's authority to only those investment adviser representatives who have a ''place of business'' within the state. The Commission proposed to clarify that, for purposes of section 203A(b)(1)(A), a place of business is any place or office from which the investment adviser representative regularly provides advisory services or otherwise solicits, meets with, or communicates to clients.[126]

Most commenters, while supporting the adoption of a Commission rule clarifying the term place of business, criticized the proposed definition as too vague. Investment adviser commenters

[118] Rule 203A–3(a)(2)(i) (17 CFR 275.203A–3(a)(2)(i)).

[119] Rule 203A–3(a)(2)(ii) (17 CFR 275.203A–3(a)(2)(ii)).

[120] *See* Proposing Release at section II.F.1.

[121] The Commission notes, however, that many states accept a person's receiving a passing grade on a broker-dealer agent examination in lieu of an investment adviser representative examination to satisfy state investment adviser representative qualification requirements. For example, many states accept passage of Series 63 (NASAA Uniform State Law Exam) and Series 7 (General Securities Representative Exam) in lieu of investment adviser representative examinations. *See, e.g.*, Ala. Admin. Code r. 830–X–3–.08(4); Or. Admin. R. 441–175–120(4) (1994).

[122] *See* Proposing Release at section II.F.3. For a description of solicitors' activities, *see* Investment Advisers Act Rel. No. 688 (July 12, 1979) (44 FR 42126 (July 18, 1979)) (adopting rule 206(4)–3 (17 CFR 275.206(4)–3), the cash solicitation rule).

[123] In the Proposing Release, the Commission interpreted the ''provides investment advice on behalf of'' limitation in section 202(a)(25) as applying to all categories of persons in the definition of supervised persons. Upon reconsideration, the Commission believes that this limitation should be applied only to ''other persons,'' and not to persons who are ''partners, officers, directors, or employees.'' As one commenter pointed out, in a draft of the Coordination Act that preceded the one in which the definition of ''supervised person'' was added, state investment adviser regulations would have been preempted as to *all* employees of a Commission-registered adviser. The definition of ''supervised person'' and the ''other persons who provide investment advice'' language were added not to limit the types of employees of Commission-registered advisers exempted from state qualification requirements, but to include persons who may not be employees but assume a similar function (*e.g.*, independent contractors). *See* Senate Report, *supra* note 4, at 4.

[124] Regardless of whether a solicitor is a ''supervised person,'' a solicitor is a ''person associated with an investment adviser'' with respect to the adviser for which he or she solicits. *See* section 202(a)(17). The adviser, therefore, has an obligation to supervise its solicitors with respect to activities performed on its behalf. *See* Investment Advisers Act Rel. No. 688, *supra* note . A solicitor for an adviser providing solely impersonal advice is not necessarily a ''person associated with an investment adviser.'' *See* Investment Advisers Act Rel. No. 688, *supra* note 122, at note 20.

[125] *See, e.g.*, Ala. Code section 8–6–2(19)(d) (1975); Idaho Code section 30–1402(14)(d) (Michie Supp. 1995) (defining investment adviser representative to include certain persons associated with an investment adviser that solicit for the sale of investment advisory services). Rule 206(4)–3 will continue to govern cash payments by a Commission-registered adviser to a solicitor who is subject to state qualification requirements.

[126] *See* Proposing Release at section II.F.2.

were concerned with the uncertainty the use of the term ''regularly'' would create. They also were concerned that, as a result of the uncertainty, they would find it difficult to ensure compliance by their supervised persons with state qualification requirements. State commenters were concerned that they would find it difficult to enforce state qualification requirements because states would be required to prove that advice had been given on a regular basis at a particular place. The Commission has revised the definition of place of business to address these concerns.

As adopted, rule 203A–3(b) defines a place of business of an investment adviser representative to mean (i) an office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients, and (ii) any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.[127] For the purposes of rule 203A–3(b), an adviser representative would be considered to hold himself out to the general public as having a location at which he conducts advisory business by, for example, publishing information in a professional directory or a telephone listing, or distributing advertisements, business cards, stationery, or similar communications that identify the location as one at which the adviser representative is or will be available to meet or communicate with clients.[128]

The definition encompasses permanent and temporary offices as well as other locations at which an adviser representative may provide advisory services, such as a hotel or auditorium.[129] Whether an adviser representative will be subject to the qualification requirements of a state in which the hotel or auditorium is located will turn on whether the adviser representative has let it generally be known that he or she will conduct advisory business at the location, rather than on the frequency with which the adviser representative conducts advisory business there. This definition should provide a clearer and more enforceable standard for determining when state qualification requirements are triggered.

G. National De Minimis Standard

The Coordination Act amends the Advisers Act to add new section 222(d), which makes state investment adviser statutes inapplicable to advisers that do not have a place of business in the state and have fewer than six clients who are residents of that state (the ''national de minimis standard'').[130] The Commission proposed a new rule to define the term ''client'' for purposes of section 222(d).[131]

The proposed rule would treat as a single client a natural person and (i) any relative, spouse, or relative of the spouse of the natural person sharing the same principal residence, and (ii) all accounts of which the natural person and such persons are the sole primary beneficiaries. The proposed rule also would treat as a single client a corporation, general partnership, limited liability company, trust, or other legal organization (other than a limited partnership) that receives investment advice based on its investment objectives rather than the objectives of its shareholders, partners, members, or beneficial owners. Under the proposal, a limited partnership would be counted as a single client if it would be counted as a single client under rule 203(b)(3)–1.[132]

Commenters stated the Commission's definition of the term ''client'' would provide needed uniformity under the national de minimis standard. The Commission is adopting a rule defining the term client, but is making several modifications from the proposal.[133] As suggested by commenters, the final rule also treats as a single client a natural person and (i) that person's minor children (whether or not they share the natural person's principal residence), and (ii) all trusts of which the natural person and/or any relative or spouse of that person sharing the same principal residence (or any minor children of that person) are the only primary beneficiaries. The rule also treats as a single client two or more corporations, partnerships, or other legal organizations that each receive investment advice based on the organization's investment objectives and have identical shareholders, partners, or beneficiaries.[134] Under the rule, any person for whom an investment adviser provides investment advisory services without compensation is not deemed to be a client.[135]

[127] 17 CFR 275.203A–3(b). In response to a number of comments, the Commission is not adopting the ''itinerant representative'' provision contained in the proposed definition that would have deemed the residence of each client to be the place of business of an adviser representative that did not regularly provide advisory services in any location. That provision is unnecessary under the revised rule.

[128] An adviser representative who sends a letter to certain existing clients indicating, for example, that she will be in their area and available for a meeting would not have held out the location of the proposed meeting to the general public for purposes of rule 203A–3(b)(2) (17 CFR 275.203A–3(b)(2)). Similarly, an adviser representative that communicates to a defined group under the terms of an advisory contract the location at which she will be available would not be holding herself out to the general public for purposes of rule 203A–3(b)(2). For example, in the case of a national organization that engages an adviser to provide advisory services to its members, an adviser representative who communicates its availability at a certain location to the members (even though those individuals may not yet be clients) would not be holding himself out to the general public.

[129] The following example discusses the application of the rule to an investment adviser representative who provides investment advisory services through an Internet web site to clients in many states: An adviser representative uses a computer at his home or an office in State W where he prepares material to be placed on the web site or distributed over the Internet (but where he does not ''regularly provide investment advisory services, solicit, meet with, or otherwise communicate with clients''). He also maintains an office in State X where he evaluates the information provided by clients and provides information in response to clients. The adviser representative's web site advertises the representative's physical office in State Y where the representative meets clients. The adviser representative e-mails its materials to a web server in State Z for posting on the web and has a post office box or an agent in State B to whom clients are instructed to mail checks. Under the rule, the adviser representative would have places of business in State X (the state in which he has an office for purposes of the rule) and State Y (the state in which he holds himself out as conducting his advisory business), but not in any other state.

[130] 15 U.S.C. 80b–18a(d).

[131] *See* Proposing Release at section II.G.

[132] At the time of the Proposing Release, rule 203(b)(3)–1 provided a safe harbor to count a limited partnership, as opposed to each limited partner, as a client for purposes of section 203(b)(3) of the Advisers Act (15 U.S.C. 80b–3(b)(3)). As discussed *infra*, the Commission is amending rule 203(b)(3)–1 to address additional client relationships.

[133] *See* rule 203(b)(3)–1. The Commission also is adopting rule 222–1 (17 CFR 275.222–1), which defines other terms used in section 222. Rule 222–1(a) (17 CFR 275.222–1(a)) defines place of business in the same manner as rule 203A–3(b), except that the term is applied to investment advisers rather than investment adviser representatives. Rule 222–1(b) (17 CFR 275.222–1(b)) defines principal place of business in the same manner that rule 203A–3(c) defines principal office and place of business. *See supra* sections II.F.2 and II.E.2 of this Release.

[134] This provision codifies the Division's interpretative position that trusts with identical beneficiaries could be treated as a single client. *See* OSIRIS Management, Inc. (pub. avail. Feb. 17, 1984). The final rule does not require that the beneficial owners have identical ownership interests in each legal organization. An adviser could not avoid registration, however, by arranging nominal common ownership. *See* section 208(d) (15 U.S.C. 80b–8(d)) (which makes it unlawful generally for any person to do indirectly any act which it would be unlawful for that person to do directly under the Advisers Act or rules thereunder).

[135] The adviser, however, has all of the fiduciary obligations with respect to such a client that it has with respect to a paying client. In addition, if the assets of such an account are held in a securities portfolio with respect to which the adviser provides continuous and regular supervisory or management services, those assets must be included in the determination of the adviser's assets under

Section 203(b)(3), the federal de minimis provision, exempts from registration with the Commission certain advisers having fewer than fifteen clients during the preceding twelve months. Rule 203(b)(3)–1 provides a safe harbor permitting the general partner or other investment adviser to a limited partnership to count the partnership, rather than each limited partner, as the client for purposes of section 203(b)(3). The Proposing Release requested comment whether the Commission should adopt one definition of ''client'' for purposes of both section 222 and section 203(b)(3) and if so, whether certain provisions of rule 203(b)(3)–1 should be revised.[136] Commenters favored the adoption of one definition of ''client'' to resolve open questions and provide consistency under both sections.

The Commission agrees that one definition has advantages and therefore is amending rule 203(b)(3)–1 to create one definition of the term ''client'' for purposes of sections 203(b)(3) and 222(d).[137] In taking this action, the Commission has modified certain provisions of rule 203(b)(3)–1 that were not consistent with proposed rule 222–2's treatment of other legal organizations.[138] The Commission does not expect these changes to affect the scope of the relief that has been provided by rule 203(b)(3)–1. The Commission also has modified the proposed rule to incorporate the safe harbor approach of rule 203(b)(3)–1. As a safe harbor, the final rule is not intended to specify the exclusive method for determining who may be treated as a single client for purposes of sections 203(b)(3) and 222(d).[139] In addition, the final rule clarifies the treatment of foreign clients for purposes of section 203(b)(3).[140]

Finally, the Commission wishes to emphasize that rules 203(b)(3)–1 and 222–2define the term ''client'' only for purposes of counting clients under sections 203(b)(3) and 222(d). Persons that are grouped together for purposes of those sections may be required to be treated as separate clients for other purposes under the Advisers Act (and state investment adviser statutes).

H. Scope of State Authority Over Commission-Registered Investment Advisers

1. Preemption of State Regulatory Authority

The Coordination Act gives the Commission primary responsibility to regulate advisers that remain registered with the Commission by preempting state regulation of those advisers. New section 203A(b)(1) of the Advisers Act provides that ''(n)o law of any State * * * requiring the registration, licensing, or qualification as an investment adviser shall apply to any [adviser registered with the Commission]. * * * ''[141] States retain authority over Commission-registered advisers under state investment adviser statutes to investigate and bring enforcement actions with respect to fraud or deceit against an investment adviser or a person associated with an investment adviser; to require filings, for notice purposes only, of documents filed with the Commission; and to require payment of state filing, registration, and licensing fees.[142]

The Proposing Release stated the Commission's view that section 203A(b) preempts not only a state's specific registration, licensing, or qualification requirements, but all regulatory requirements imposed by state law on Commission-registered advisers relating to their advisory activities or services, except those provisions that are specifically preserved by the Coordination Act.[143] As a result, the Commission concluded that state regulatory provisions, such as those that establish recordkeeping, disclosure, and capital requirements, will no longer apply to advisers registered with the Commission.[144]

The Commission received extensive comment on its interpretation of the scope of state preemption. Investment adviser commenters strongly favored the interpretation, while NASAA and many of the state commenters argued that the interpretation should be narrowed substantially. NASAA asserted that because the Coordination Act preempts only state registration requirements, only state regulatory requirements that ''flow from'' state registration are preempted.[145]

The Commission continues to believe that the Coordination Act broadly preempts state investment adviser statutes with respect to Commission-registered advisers. While the language of section 203A(b)(1) is not necessarily clear on its face and is susceptible to different readings,[146] in the

management. *See infra* section II.B.1 of this Release. The Commission intends that the term ''compensation,'' as used in the rule, have the same meaning as the term used in section 202(a)(11) of the Advisers Act (15 U.S.C. 80b–2(a)(11)). *See* Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Services, Investment Advisers Act Rel. No. 1092 (Oct. 8, 1987) (52 FR 38400 (Oct. 16, 1987)), in which the Division explained that ''compensation'' includes any economic benefit, whether or not in the form of an advisory fee, and that it need not be paid directly, but can be provided by a third party.

[136] *See* Proposing Release at note 96 and accompanying text.

[137] Rule 222–2 (17 CFR 275.222–2), as adopted, provides that for purposes of section 222(d)(2) of the Act, an adviser may rely upon the definition of client provided by rule 203(b)(3)–1.

[138] Rule 203(b)(3)–1, as amended, no longer contains a requirement that the limited partnership interests be securities.

[139] Where a client relationship involving multiple persons does not come within the rule, the question of whether it may appropriately be treated as a single client must be determined on the basis of the facts and circumstances involved. In light of the inherently factual nature of such determinations, the Commission and its staff generally will not entertain requests for interpretive advice with respect to client relationships that do not come within rule 203(b)(3)–1.

[140] 17 CFR 275.203(b)(3)–1(b)(5). The rule provides that, for purposes of section 203(b)(3), an adviser with its principal office and place of business outside the United States must count only clients that are United States residents. An adviser with its principal office and place of business in the United States must count all clients, regardless of their place of residence. *See generally* Vocor International Holding S.A. (pub. avail. Apr. 9, 1990). Clients that are not United States residents need not be counted for purposes of section 222(d), since the availability of the national de minimis standard turns on the number of clients who are *residents of the state* in question.

[141] 15 U.S.C. 80b–3A(b)(1).

[142] *See* section 203A(b)(2) of the Advisers Act (15 U.S.C. 80b–3A(b)(2)); section 307(a), (b) of the Coordination Act.

[143] *See* Proposing Release at note 20 and accompanying text.

[144] *See* Proposing Release at note 21 and accompanying text.

[145] Several state commenters asserted that, under the Commission's interpretation of the preemption provision, the Coordination Act would violate the Tenth Amendment's command that powers not delegated to the federal government by the Constitution are reserved to the states. This argument appears to confuse the scope of preemption (about which some of the commenters and the Commission disagree) with the constitutional authority of Congress (and the delegated authority of the Commission) to exclusively regulate investment advisers registered with the Commission. Section 203A(b) does nothing more than preempt certain state laws regulating Commission-registered advisers. The Supreme Court has made clear that the displacement of state law under a federal regulatory scheme does not violate the Tenth Amendment, provided that it is based on a valid exercise of Congress' constitutional powers such as those arising under the Commerce Clause. ''(T)he Federal Government may displace state regulation even though this serves to 'curtail or prohibit the States' prerogatives to make legislative choices respecting subjects the States may consider important.'' *Federal Energy Regulatory Commission* v. *Mississippi*, 456 U.S. 742, 759 (1982) (quoting *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 290 (1981)). No commenter suggested that Congress exceeded its Commerce Clause authority in passing the Coordination Act. *See, e.g.*, section 201 of the Advisers Act (15 U.S.C. 80b–1) (express findings of the effects of investment advisory activities on interstate commerce).

[146] NASAA interprets the language ''[n]o law of any State * * * requiring the registration, licensing, or qualification'' as restrictive (*i.e.*, meaning ''no state law *that* requires * * *''), while the Commission interprets the same language as

Continued

Commission's judgment the legislative history of the Coordination Act strongly supports broad preemption. Congress intended that Commission-registered advisers no longer be subject to ''overlapping'' state and federal regulation,[147] but instead be subject to uniform ''national rules.''[148] Under NASAA's narrower interpretation, however, multiple, non-uniform state regulation of Commission-registered advisers would be preserved. Moreover, the effect of the preemption provisions of the Coordination Act could be severely weakened, if not nullified, if a state were to impose regulatory requirements on advisers not subject to state registration, but who may be transacting business in the state.[149]

The structure and design of section 203A suggest Congress intended to broadly preempt state investment adviser law. If Congress simply preempted *all* state law with respect to Commission-registered advisers, such a provision would have been over inclusive.[150] If Congress preempted state investment adviser law by itemizing specific regulations to be preempted, such a provision would have been under inclusive and would have led to confusion whether a particular state regulation was included within a preempted category. Thus, the Commission believes that section 203A(b)(1) was drafted to describe what state investment adviser statutes typically require—registration, licensing, and qualification—in order to preempt statutes containing these requirements with respect to Commission-registered advisers. This view of section 203A(b)(1) comports with the express intent of Congress to subject larger advisers to a uniform, national regulatory regime. It also explains why Congress believed it was necessary to preserve certain state authority. If section 203A(b)(1) preempts only the specific registration, licensing, and qualification requirements of state investment adviser statutes, Congress would not have had to preserve the authority of states to investigate and enforce fraud.[151]

2. Preservation of State Anti-Fraud Authority

Section 203A(b)(2) preserves state authority to investigate and bring enforcement actions with respect to fraud or deceit against a Commission-registered adviser or a person associated with a Commission-registered adviser. In the Proposing Release, the Commission interpreted section 203A(b)(2) as precluding a state from indirectly regulating the activities of Commission-registered advisers by applying state requirements that define ''dishonest'' or ''unethical'' business practices unless the prohibited practices would be fraudulent or deceptive absent the requirements.[152]

NASAA and state commenters took strong exception to this interpretation. Some argued states could continue to enforce business practice rules as a means of enforcing anti-fraud rules. The Commission does not believe that the Coordination Act can be read to preserve such state regulatory authority over Commission-registered advisers. Under the design of the Coordination Act, Congress gave the responsibility of adopting and enforcing prophylactic rules with respect to state-registered advisers to states, and with respect to Commission-registered advisers to the Commission.[153] Both the states and the Commission, however, retain anti-fraud authority with respect to all advisers.[154] On its face, section 203A(b)(2) preserves only a state's authority to *investigate* and *bring enforcement actions* under its anti-fraud laws with respect to Commission-registered advisers.[155] The Coordination Act does not limit state enforcement of laws prohibiting fraud. Rather, states are denied the ability to reinstitute the system of overlapping and duplicative regulation of investment advisers that Congress sought to end.[156]

I. Other Amendments to Advisers Act Rules

The Commission proposed to amend several rules under the Advisers Act to reflect changes made by the Coordination Act.[157] The few commenters that addressed these proposed amendments generally supported them, and the Commission is adopting the amendments as proposed.

1. Amendments to Form ADV; Elimination of Form ADV–S

As proposed, the Commission is amending Form ADV to add a new Schedule I, which is substantially the same as Form ADV–T.[158] Schedule I will be used by the Commission to screen applicants as to eligibility for Commission registration. Schedule I is required to be included with all new registrations filed on or after July 8, 1997. Additionally, the Commission is adopting amendments to rule 204–1 to require an adviser to file an amended Schedule I annually within 90 days of the end of the adviser's fiscal year.[159]

descriptive (*i.e.*, ''no state law, *which* requires * * *'').

[147] Senate Report, *supra* note 4, at 3–4.

[148] *Id.* at 4.

[149] This process could lead to Commission-registered advisers being subject to a *less* uniform scheme of regulation than state advisers, since states are expressly precluded by section 222 (b) and (c) of the Advisers Act (15 U.S.C. 80b–18a (b), (c)) from enforcing non-uniform books and records and financial responsibility rules with respect to state-registered advisers, but not with respect to Commission-registered advisers.

In its comment letter, NASAA cited *Cipollone* v. *Liggett Group, Inc.*, 505 U.S. 504 (1992) for the proposition that the historic police powers of the states are not to be superseded by a federal statute unless that is the clear and manifest purpose of Congress. As discussed in the text above, the Commission believes that such clear and manifest purpose is demonstrated by the language of the Coordination Act and the intent of Congress as expressed in the Coordination Act's legislative history.

[150] Such a provision, for example, would preempt areas of state law such as labor and employment laws, commercial codes, and even criminal law as it applies to Commission-registered advisers.

[151] *See supra* note 142 and accompanying text.

[152] *See* Proposing Release at notes 23 and 24 and accompanying text. The Commission, however, does not view section 203A(b)(2) as preempting state private civil liability laws or the authority of a state to bring an action against a Commission-registered adviser for failure to make notice filings or pay fees.

[153] Senate Report, *supra* note 4, at 4 (''The states should play an important and logical role in regulating small investment advisers whose activities are likely to be concentrated in their home state. Larger advisers with national businesses, should be registered with the Commission *and be subject to national rules.*'' (emphasis added)).

[154] *Id.* (''Both the Commission and the states will be able to continue bringing anti-fraud actions against investment advisers regardless of whether the investment adviser is registered with the state or the SEC.'')

[155] While there is no legislative history addressing the scope of section 203A(b)(2), Congress used similar language to preserve state anti-fraud laws when it preempted state regulation of securities offerings in Title I of the 1996 Act. *See* section 18(c)(1) of the Securities Act of 1933 (15 USC 77r(c)(1)) (''the (state) securities commission(s) * * * shall retain jurisdiction under the laws of such State(s) *to investigate and bring enforcement actions with respect to fraud or deceit.* * * *'' (emphasis added)). The House report discussing that section explained that ''(i)n preserving State laws against fraud and deceit * * * the Committee intends to prevent the States from indirectly doing what they have been prohibited from doing directly. * * * The legislation preempts authority that would allow the States to employ the regulatory authority they retain to reconstruct in a different form the regulatory regime * * * that section 18 has preempted.'' House Report, *supra* note 96, at 34. The Senate Report discusses a similar section in the Senate bill, stating that ''(t)he Committee clearly does not intend for the ''policing'' authority to provide states with a means to undo the state registration preemptions.'' Senate Report, *supra* note 4, at 15.

[156] Although the Commission is subject to no similar prohibition with regard to the application of its prophylactic rules to state-registered advisers, the Commission is making such rules inapplicable to state-registered advisers in recognition of the clearly stated purposes of Congress in passing the Coordination Act. *See infra* section II.I of this Release.

[157] *See generally* Proposing Release at section II.H.

[158] *See supra* section II.C.1.a of this Release. Schedule I is attached to this Release as Appendix B.

[159] 17 CFR 275.204–1(a)(1).

The Commission also is amending Items 18 and 19 to Part I of Form ADV to require advisers to determine discretionary and non-discretionary assets under management in the same manner as required by Instruction 7 of Schedule I.

Like Form ADV–T, Schedule I requires an adviser to indicate whether it remains eligible for Commission registration. Unlike Form ADV–T, however, Schedule I does not operate as a request for withdrawal of the adviser's registration from the Commission; rather, an adviser that indicates that it is not eligible for Commission registration on Schedule I is required to withdraw from Commission registration by filing Form ADV–W.[160]

The Commission no longer has any regulatory need for advisers to file Form ADV–S, the annual report for advisers registered under the Advisers Act, and therefore is eliminating the requirement to file Form ADV–S, amending rule 204–1 to delete references to Form ADV–S, and amending rule 279.3 to refer to Form ADV–T.

2. Rule 204–2—Books and Records

In light of the Congressional determination not to subject advisers registered with the states to substantive federal regulatory requirements after July 8, 1997, the Commission is amending rule 204–2 to make the recordkeeping requirements of that rule applicable only to advisers registered with the Commission.[161] Additionally, the Commission is amending rule 204–2 to require advisers that register with the Commission after July 8, 1997 to preserve any books and records the adviser was previously required to maintain under state law.[162] These books and records are required to be maintained in the same manner and for the same period of time as the other books and records required to be maintained under rule 204–2(a).[163]

3. Rule 205–3—Performance Fee Arrangements

By its terms, section 205 prohibits all advisers, except those exempt from registration under section 203(b), from entering into advisory contracts in which the adviser would be compensated on the basis of performance of client accounts.[164] Therefore, advisers prohibited from registering with the Commission after July 8, 1997 will continue to be subject to the limitations of section 205.[165] Rule 205–3 provides an exemption from these limitations, but the rule applies only to advisers registered with the Commission. The Commission is amending rule 205–3 to make this exemption available to all advisers, including those registered only under state law after July 8, 1997.[166]

4. Rule 206(3)–2—Agency Cross Transactions

By its terms, section 206(3) of the Advisers Act prohibits all advisers from engaging in agency cross transactions.[167] Rule 206(3)–2 provides a non-exclusive safe harbor from this prohibition, but applies only to certain advisers and broker-dealers registered with the Commission.[168] Therefore, advisers prohibited from registering with the Commission after July 8, 1997 will continue to be subject to the limitations of section 206(3). The Commission is amending rule 206(3)–2 to make this safe harbor available to all advisers, including those registered only under state law after July 8, 1997.[169]

5. Rules 206(4)–1, 206(4)–2, and 206(4)–4—Anti-Fraud Rules

The Commission has adopted four rules pursuant to its authority under section 206(4) to ''define, and prescribe means reasonably designed to prevent * * * acts, practices, and courses of business [that] are fraudulent, deceptive, or manipulative.'' [170] These rules prohibit certain abusive advertising practices, govern an adviser's custody of client funds and securities, address the payment of cash to persons soliciting on behalf of an adviser, and require certain disclosure to clients regarding an adviser's financial condition and disciplinary history.[171] Each of these rules, other than the cash solicitation rule, applies to all advisers, regardless of whether they are registered with the Commission. The Commission is amending these rules to make them applicable only to advisers registered (or required to be registered) with the Commission. By excluding advisers not registered with the Commission from these rules, the Commission is not suggesting that the practices prohibited by these rules would not be prohibited by section 206.[172] Rather, the Commission recognizes that these rules contain prophylactic provisions, and

[160] Instruction 6 to Schedule I. A separate Form ADV–W continues to be required in order to assure that the Commission staff is able to act promptly on the withdrawal from registration. Subject to the grace period under rule 203A–1(c), failure to file the completed Form ADV–W will subject an adviser to the commencement of proceedings to cancel its registration.

[161] Rule 204–2(a) (17 CFR 275.204–2(a)).

[162] Rule 204–2(k) (17 CFR 275.204–2(k)).

[163] Under rule 204–2(k), an adviser changing from state to federal registration will count the period during which the books and records were maintained under state law toward compliance with the Commission's recordkeeping requirement. For example, an adviser that was state-registered for one year prior to registering with the Commission will be required to maintain the books and records required under state law for an additional four years to fulfill the requirement of rule 204–2(e) (17 CFR 275.204–2(e)) that books and records be maintained for five years.

[164] Section 205(a)(1) (15 U.S.C. 80b–5(a)(1)). Section 205(a)(1) provides that ''[n]o investment adviser, unless exempt from registration pursuant to section 203(b)'' may enter into, extend, or renew any investment advisory contract that provides for performance-based compensation.

[165] State-registered advisers generally would not be exempted from registration under section 203(b), but rather, would be prohibited from registration under section 203A(a).

[166] The extension of rule 205–3's safe harbor to state-registered advisers does not preclude a state from further restricting performance fee arrangements.

[167] Section 206(3) (15 U.S.C. 80b–6(3)). Section 206(3) makes it unlawful for any investment adviser acting as principal for its own account to knowingly sell any security to, or purchase any security from, a client, without disclosing to the client in writing before the completion of the transaction the capacity in which the adviser is acting and obtaining the client's consent. This limitation also applies if the adviser is acting as a broker for a person other than the client in effecting such a transaction.

[168] 17 CFR 275.206(3)–2.

[169] The amendment to rule 206(3)–2 was not proposed in the Proposing Release, but the Commission believes that good cause exists to adopt the amendment without the notice and comment period required under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)). In the Proposing Release, the Commission proposed to amend several rules under the Advisers Act to reflect changes made by the Coordination Act by exempting state-registered advisers from Commission regulation. In most cases, these amendments involved modifying the scope of the rules to apply only to Commission-registered advisers. *See* amendments to rules 204–2, 206(4)–1, 206(4)–2, and 206(4)–4 (discussed in sections II.H.2 and II.H.4 of the Proposing Release and sections II.I.2 and II.I.5 of this Release). In another case, however, a rule was proposed to be broadened in order to make an existing exemption available to all advisers, including state-registered advisers. *See* amendments to rule 205–3 (discussed in section II.H.3 of the Proposing Release and section II.I.3 of this Release). In preparing the Proposing Release, the Commission staff surveyed the rules under the Advisers Act to determine which rules needed to be amended. The need to amend rule 206(3)–2, however, was brought to the attention of the Commission staff after the publication of the Proposing Release in the **Federal Register**. The Commission believes good cause exists to amend rule 206(3)–2 without notice and comment. The decision to amend rule 206(3)–2 does not reflect a specific policy decision, but rather, is part of the technical amendment of *all* the rules under the Advisers Act to reflect the changes of the Coordination Act. The public effectively was on notice that the Commission was undertaking such a technical revision to the Advisers Act rules. *See* Proposing Release at section II.H.1. (''The Commission is proposing amendments to several rules under the Advisers Act to reflect changes made by the Coordination Act.'').

[170] 15 U.S.C. 80b–6(4).

[171] *See* rules 206(4)–1 to –4 [17 CFR 275.206(4)–1 to –4].

[172] The anti-fraud provisions of the Advisers Act will continue to apply to state-registered advisers after July 8, 1997. *See* Proposing Release at note 108 and accompanying text.

that after the effective date of the Coordination Act, the application of these provisions to state-registered advisers is more appropriately a matter for state law.[173]

III. Effective Dates

The effective date of the Coordination Act is July 8, 1997. With the exception of rule 203A–2, the rules and rule amendments adopted in this Release will take effect on that same date, July 8, 1997.

Rule 203A–2, which provides four exemptions from the prohibition on Commission registration,[174] will become effective July 21, 1997. The Office of Management and Budget has determined that rule 203A–2 is a ''major rule'' under Chapter 8 of the Administrative Procedure Act,[175] which was added by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').[176] SBREFA requires all final agency rules to be submitted to Congress for review and requires generally that the effective date of a major rule be delayed for 60 days pending Congressional review. A major rule may become effective at the end of the 60-day review period, unless Congress passes a joint resolution disapproving the rule.[177]

As discussed above, all investment advisers registered with the Commission on July 8, 1997 are required to file a completed Form ADV–T with the Commission no later than that date.[178] Advisers that are eligible for an exemption from the prohibition on Commission registration provided by rule 203A–2 must indicate that eligibility by checking the appropriate box on Form ADV–T. Although the exemptive rule will not become effective until July 21, 1997, the instructions to Form ADV–T require an investment adviser to indicate eligibility for an exemption assuming that rule 203A–2 will become effective.[179] Advisers that will be eligible for an exemption under rule 203A–2 will remain registered with the Commission between July 8, 1997 and the rule 203A–2 effective date, although the exemptive rule will not be effective during that period. If Congress were to pass a joint resolution during that time period disapproving rule 203A–2, the Commission would notify all such advisers that those exemptions are not available.

IV. Paperwork Reduction Act

Certain provisions of the rules and rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Commission submitted them to the Office of Management and Budget (''OMB'') for review and OMB has approved them in accordance with 44 U.S.C. 3507(d). The title for the collections of information and their OMB control numbers are: ''Form ADV''—3235–0049, ''Schedule I''—3235–0490, ''Rule 203A–5 and Form ADV–T''—3235–0483, and ''Rule 204–2''—3235–0278, all under the Advisers Act. The Commission did not receive any comments from the public in response to its request for comments in the Paperwork Reduction Act section of the Proposing Release. The final rules as adopted do not include any changes that materially affect the collections of information, including their requirements, purpose, use, or necessity. In response to comments from OMB, the Commission revised part of its Paperwork Reduction Act submission to OMB to reflect one collection of information on Form ADV, as amended, and another collection of information on new Schedule I to Form ADV. As described below, this revision, as well as an updated estimate regarding the number of respondents to the collections of information, has resulted in a change to the burden estimates for Form ADV and Schedule I. The collections of information imposed by Form ADV, Schedule I, rule 203A–5 and Form ADV–T, and rule 204–2 are in accordance with 44 U.S.C. 3507(d). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form ADV

Form ADV is required by rule 203–1 (17 CFR 275.203–1) to be filed by every applicant for registration with the Commission as an investment adviser. Rule 204–1 (17 CFR 275.204–1) sets forth the circumstances requiring the filing of an amended Form ADV. Registrants must file an amended Form ADV only when information on the initial Form ADV filing has changed, either at the end of the fiscal year or ''promptly'' for certain material changes. The Commission amended rule 204–1 to require an adviser additionally to file the cover page of Form ADV annually within 90 days after the end of the adviser's fiscal year (along with a new Schedule I, discussed below), regardless of whether other changes have taken place during the year.

The Commission has revised its estimate of the overall burden hours required by Form ADV as a result of a change in the number of estimated respondents. The likely respondents to this collection of information are all applicants for registration with the Commission after July 8, 1997 as well as all currently-registered advisers who will remain registered after July 8, 1997. The number of currently-registered advisers is 23,350, and the Commission estimates that approximately 28 percent of these advisers (6,538) will remain registered after July 8, 1997. The Commission estimates that it will take currently-registered advisers 1.0672 hours, on average, to fill out and file an amended Form ADV, and that currently-registered advisers will, on average, file Form ADV 1.5 times per year. The Commission also estimates that it will take new applicants 9.0063 hours, on average, to fill out and file their first Form ADV. The Commission estimates that approximately 750 new applicants will register with the Commission per year. Of the 750 new applicants per year, 650 will amend Form ADV an average of 1 time annually. The estimated 100 newly-formed investment advisers that will rely on the exemption provided by 203A–2(d) will amend Form ADV an average of 2 times annually (for purposes of updating their Schedule I 120 days after initial registration). Accordingly, the revised annual burden estimate is 18,128 total hours in the aggregate for all respondents to Form ADV.

The collection of information required by Form ADV is mandatory, and responses are not kept confidential. The amendments to the instructions to Form ADV and rule 204–1 do not affect the burden of filing Form ADV itself. The additional burden of filing the Schedule I is included in the analysis of Schedule I (below).

Schedule I

Schedule I is a new schedule to Form ADV. Schedule I requires an adviser to declare whether it is eligible for Commission registration. Schedule I, as

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[173] The Commission also is amending rule 206(4)–3, the cash solicitation rule, to correct cross-references that were made incorrect by changes made to the Advisers Act by the Coordination Act.

[174] *See supra* section II.D of this Release.

[175] 5 U.S.C. 801.

[176] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996). Under SBREFA, a rule is ''major'' if the rule is likely to result in (i) an annual effect on the economy of $100 million or more, (ii) a major increase in costs or prices for consumers or individual industries, or (iii) significant adverse effects on competition, investment, or innovation. 5 U.S.C. 804(2).

[177] 5 U.S.C. 801(a)(3).

[178] *See supra* section II.A of this Release.

[179] *See* Instruction 5(a) to Form ADV–T. Likewise, investment advisers registering with the Commission on or after July 8, 1997, but before July 21, 1997, should indicate eligibility for an exemption on Schedule I assuming that rule 203A–2 will become effective.

part of Form ADV, is required to be filed with an investment adviser's initial application on Form ADV. The rules imposing this collection of information are found at 17 CFR 275.203–1 and 17 CFR 279.1. The Commission has not amended rule 203–1 or rule 279.1. Rule 204–1 (17 CFR 275.204–1) sets forth the circumstances requiring the filing of an amended Form ADV. The Commission amended rule 204–1 to require an adviser to file an amended Schedule I annually within 90 days after the end of the adviser's fiscal year. In addition, an investment adviser relying on the ''reasonable expectation'' exemption from the prohibition on Commission registration provided by rule 203A–2(d) is required to file an amended Schedule I to Form ADV at the end of 120 days after its initial registration with the Commission. If the adviser indicates on the amended Schedule I that it has not become eligible to register with the Commission, the adviser is required to file a Form ADV–W concurrently with the Schedule I, thereby withdrawing its registration with the Commission.[180] The collection of the information required by Schedule I is mandatory and responses will not be kept confidential.

The Commission has revised its estimate of the overall burden hours required by Schedule I as a result of a change in the number of estimated respondents and by considering Schedule I as a separate collection of information from Form ADV. The likely respondents to this collection of information are all applicants for registration with the Commission after July 8, 1997 as well as all currently-registered advisers who will remain registered after July 8, 1997. As noted above, the Commission estimates that approximately 6,538 advisers will remain registered with the Commission after July 8, 1997. These currently-registered advisers will file Schedule I once per year. Of the 750 new applicants per year, 650 will file Schedule I once per year. The Commission estimates that approximately 100 newly registered advisers each year will rely on the ''reasonable expectation'' exemption provided by rule 203A–2(d), and that these advisers will file Schedule I twice per year. The Commission estimates that it will take all advisers, whether currently-registered or new applicants, 52.13 minutes, on average, to fill out and file Schedule I. Accordingly, the revised annual burden estimate is 6,419 total hours in the aggregate for all respondents to Schedule I.

Rule 203A–5 and Form ADV–T

Providing the information required by Form ADV–T is mandatory, and responses will not be kept confidential. Rule 203A–5 and Form ADV–T are being adopted substantially as proposed, and the burden estimate has not changed.

Rule 204–2

Providing the information and keeping the books and records required by rule 204–2 is mandatory, and responses generally are kept confidential. The amendments to rule 204–2 were adopted substantially as proposed, and the burden estimate has not changed.

V. Cost/Benefit Analysis

In adopting these rules the Commission has given consideration to their benefits as well as their costs. Certain of the new rules and rule amendments, as well as Form ADV–T and new Schedule I to Form ADV, are necessary to implement the Coordination Act, both initially and on an on-going basis.[181] They will establish the process by which the Commission will identify those larger advisers that will remain registered with the Commission and those smaller advisers that are not eligible for Commission registration. This process will implement Congress' determination that only larger advisers be regulated by the Commission. In addition, by identifying smaller advisers whose registration will be withdrawn, these rules will work to prevent the preemption of state laws regulating those small advisers that Congress intended to be regulated solely by the states. Although both of these benefits are substantial, neither is quantifiable. These rules impose some incidental preparation costs on investment advisers required to file Form ADV–T and on those advisers that will, on an ongoing basis, be required to file Schedule I. Without implementing rules, however, the goals of the Coordination Act would not be achieved.

Other rules related to the eligibility for and process of Commission registration and de-registration are designed to reduce costs on investment advisers.[182] These rules (i) relieve advisers from the regulatory burden of frequently having to register and then de-register with the Commission as a result of changes in the amount of their assets under management, (ii) provide guidance on how an adviser should determine its assets under management, and (iii) provide a safe harbor for advisers that register with state securities authorities based on a reasonable belief that they are prohibited from registering with the Commission because they have insufficient assets under management. These rules are expected to provide investment advisers with substantial benefits, and are not expected to impose any significant costs on investment advisers or investors.

One rule exempts certain classes of advisers from the prohibition on Commission registration, based on a finding by the Commission that the prohibition on Commission registration would be unfair, a burden on interstate commerce, or inconsistent with the purposes of the Coordination Act.[183] This rule should reduce regulatory burdens on investment advisers, without significantly affecting compliance costs or imposing other significant costs on investment advisers or the investing public. Although the Commission will incur the incidental additional costs associated with regulating the advisers that qualify for these exemptive rules, the Commission has concluded that these costs are appropriate in light of the purposes of the Coordination Act and the exemptive authority provided to the Commission therein.

The Commission is also adopting several definitional rules to fill gaps left open by the Coordination Act. These rules are intended to permit investment advisers to more readily ascertain their regulatory status and that of their supervised persons. Investment advisers generally are expected to benefit as a result of this increased certainty. In particular, Commission-registered advisers and their supervised persons may incur substantial benefits as a result of the definitions of investment adviser representative and place of business to the extent that the failure of the Commission to define these terms could lead to the application of significantly broader and non-uniform definitions by the states. Broader state definitions would subject a greater number of supervised persons to state qualification requirements than the

[180] Such an adviser also is required to file a short written undertaking on Schedule E to Form ADV, simply stating that the adviser ''will withdraw from registration'' if on the 120th day after registering with the Commission the adviser does not meet the eligibility requirements for registration under section 203A of the Advisers Act and rules thereunder. This requirement imposes only a nominal burden, subsumed under the burden attributed to the Form ADV.

[181] *See* rules 203A–5 and 204–1.

[182] *See* rule 203A–1, Instruction 8 to Form ADV–T, and rule 203A–4.

[183] *See* rule 203A–2.

Commission believes Congress intended.[184] The Commission believes that institutional and other non-retail clients do not need the protections of state qualification requirements. The Commission has concluded, therefore, that there are no substantial costs associated with the narrower definitions the Commission is adopting.

Finally, amendments to several existing rules under the Advisers Act reflect the Coordination Act's reallocation of regulatory responsibilities over investment advisers. These amendments are not expected to provide substantial savings to investment advisers or to impose significant costs on investment advisers or the investing public. They will, however, have important regulatory benefits, because in each case the rules will either work to implement the Coordination Act's goal of reallocating regulatory responsibility for advisers between the Commission and the securities authorities of the states, or to ensure that smaller, state-registered advisers are not unfairly disadvantaged.

A complete cost-benefit analysis (including supporting data) prepared by the Commission staff is available for public inspection in File No. S7–31–96, and a copy may be obtained by contacting Cynthia G. Pugh, Securities and Exchange Commission, 450 5th Street, NW., Stop 10–2, Washington, DC 20549.

VI. Summary of Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') in accordance with the provisions of the Regulatory Flexibility Act (''Reg. Flex. Act'') (5 U.S.C. 604) in connection with the adoption of rule and form amendments described in this Release. An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with 5 U.S.C. 603 in conjunction with the Proposing Release and was made available to the public. A summary of the IRFA was published in Investment Advisers Act Release No. 1601 (Dec. 20, 1996) (61 FR 68480, 68491–92 (Dec. 27, 1996)). As discussed further below, one comment was received on the IRFA.

The FRFA explains both the need for, and the objectives of, the rules adopted by the Commission. As set forth in greater detail in the FRFA, the Coordination Act makes several amendments to the Advisers Act, the most significant of which reallocates federal and state responsibilities for the regulation of investment advisers currently registered with the Commission by limiting the application of federal law and preempting certain state laws. The adopted rules and rule amendments implement provisions of the Coordination Act that reallocate regulatory responsibilities for investment advisers between the Commission and the securities regulatory authorities of the states. The adopted rules establish the process by which all investment advisers that are currently registered with the Commission will determine their eligibility for Commission registration as of July 8, 1997, the effective date of the Coordination Act. The adopted amendments to several rules under the Advisers Act generally reflect the changes made by the Coordination Act.

The FRFA also (i) summarizes the significant issues raised by public comments in response to the IRFA, (ii) summarizes the Commission's assessment of such issues, and (iii) states any changes made in the proposed rules as a result of such comments. The Commission received one comment on the IRFA,[185] which noted that the IRFA did not consider the potential impact of the proposed rules on small advisers that manage funds regulated under ERISA.[186] According to the commenter, by failing to discuss such an exemption or other potential alternatives that could minimize this impact on small ERISA advisers,[187] the Commission overlooked an important effect of the proposed rules. The Regulatory Flexibility Act requires that an agency describe in the IRFA those significant alternatives to the proposed rule that would further the stated objectives of the applicable statutes and that would minimize the significant economic impact of the proposed rule on small entities.[188] In response to this comment, the FRFA discusses the possibility of exempting these small advisers from the prohibition on Commission registration, and explains the Commission's conclusion that such an exemption would not be consistent with the objectives of the Coordination Act.

The FRFA also provides a description of and an estimate of the number of small entities to which the rules will apply. For purposes of the Advisers Act and the Reg. Flex. Act, an investment adviser generally is a small entity (i) if it manages assets of $50 million or less, in discretionary or non-discretionary accounts, as of the end of its most recent fiscal year and (ii) if it renders other advisory services, has $50,000 or less in assets related to its advisory business.[189] The Commission estimates that up to 17,650 of approximately 23,350 investment advisers currently registered with the Commission are small entities. The Commission estimates that, after July 8, 1997, approximately 850 of these small-entity advisers will remain eligible for registration with the Commission.[190]

As required by the Reg. Flex. Act, the FRFA describes the projected reporting, recordkeeping and other compliance requirements of the rules, and includes an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the reports or records. Rule 203A–5 requires all investment advisers registered with the Commission on July 8, 1997, to file new Form ADV–T no later than that date. The FRFA notes, however, that the Commission anticipates that as a consequence of this one-time filing, approximately 72 percent of the investment advisers currently registered with the Commission will no longer be subject to federal investment adviser regulatory requirements, including reporting and recordkeeping requirements. The incidental burden imposed by this one-time filing requirement is necessary in order to implement the Coordination Act. The FRFA explains that the Commission devised Form ADV–T so that an individual familiar with the adviser's services and operations may complete the form without legal or other professional assistance, although in

[184] *See supra* section II.F.

[185] *See* Letter from The Honorable Christopher S. Bond, Chairman of the Senate Committee on Small Business (Feb. 25, 1997) to Arthur Levitt, Chairman, SEC (available in SEC File No. S7–31–96).

[186] *See generally* section II.D.5 of this Release. As discussed in that section, ERISA protects a plan's named fiduciary from liability for the individual decisions of an investment manager appointed by the fiduciary to manage the plan's assets. The term investment manager is defined by ERISA to include certain investment advisers that are registered under the Advisers Act, as well as certain banks and insurance companies. Although the Coordination Act amended ERISA to include state-registered investment advisers as investment managers, that amendment expires two years after enactment, on October 11, 1998.

[187] 5 U.S.C. 603(c).

[188] *See id.*

[189] *See* rule 275.0–7 (17 CFR 275.0–7).

[190] The Commission estimates that approximately 16,800 (72 percent) of the 23,350 advisers currently registered with the Commission will be ineligible for Commission registration after July 8, 1997. Most of those 16,800 advisers will be small entities. Certain small entity advisers, however, will remain eligible for Commission registration, including, for example, small entity advisers in the four states that do not currently regulate investment advisers. The IRFA estimated that roughly 800 small entity advisers will remain eligible for Commission registration after the effective date of the Coordination Act. The estimate presented in the IRFA has been increased to reflect the additional advisers that have registered with the Commission.

some cases an adviser may need to seek outside assistance in connection with the calculation of its assets under management.

The adopted amendments to Form ADV add new Schedule I, which must be completed by every adviser registering with the Commission after July 8, 1997, and revise Items 18 and 19 to Part I of Form ADV to direct advisers to determine discretionary and non-discretionary assets under management in the same manner as required by Schedule I. Schedule I requires advisers to report information similar to that required by Form ADV–T. The Commission believes that the burden this new schedule imposes on advisers is necessary in order to accomplish, on an ongoing basis, the Coordination Act's reallocation of regulatory responsibility for investment advisers. The FRFA notes that like Form ADV–T, the Commission has designed Schedule I so that an individual familiar with the adviser's services and operations can complete this schedule without legal or other professional assistance, although in some cases, an adviser may need to seek outside assistance in connection with the calculation of its assets under management. The FRFA explains that the annual burden imposed on small entity advisers by the amendments to Items 18 and 19 of Form ADV is expected to be negligible.

Rule 203A–2(d) permits a newly formed investment adviser with a reasonable expectation that it will be eligible for Commission registration within 120 days after such registration becomes effective, to register with the Commission. The rule requires the newly formed adviser (i) to include on Schedule E to its Form ADV an undertaking to withdraw from Commission registration if, on the 120th day after registering with the Commission, it has not become eligible for Commission registration, and (ii) to file an amended Schedule I to Form ADV at the end of the 120-day period. If the amended Schedule I indicates that the adviser has not become eligible for Commission registration, the rule requires the adviser to file concurrently a Form ADV–W, thereby withdrawing its Commission registration. The FRFA notes that this burden on newly formed advisers that choose to rely on this rule will be outweighed by the cost savings and benefits provided by the rule.

The adopted amendments to rule 204–1 require all Commission-registered investment advisers to update new Schedule I annually. The FRFA explains that because the Commission has eliminated the requirement that Commission-registered advisers annually file Form ADV–S, this new annual reporting requirement should not be a significant additional burden on the small-entity investment advisers that remain eligible for Commission registration after July 8, 1997.

The adopted amendments to rule 204–2 make the books and recordkeeping requirements of that rule applicable only to advisers registered with the Commission, and so eliminate these recordkeeping requirements with respect to small entities and other advisers that are not eligible for Commission registration after July 8, 1997. The amendments to this rule also require advisers that register with the Commission after July 8, 1997, to preserve any books and records the adviser was previously required to maintain under state law, but this requirement is not expected to be a significant additional burden on advisers that register with the Commission after July 8, 1997. The FRFA notes that the adopted amendment does not have any impact on the type of professional skills necessary for compliance with rule 204–2.

The FRFA also describes the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes.

As discussed further in the FRFA, in connection with the adopted rules, the Commission considered the following alternatives to minimize the impact on small entities: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) exemption from coverage of the rule, or any part thereof, for small entities.[191] The Commission is easing the impact on small entities by increasing the threshold for Commission registration from $25 to $30 million of assets under management, and by providing an optional exemption from Commission registration for advisers with assets under management of between $25 and $30 million. The exemption gives such advisers, including many small entities, the flexibility to decide when it is best for them to transition from state to Commission registration if their assets under management increase to $25 million or more, and to transition from Commission to state registration if their assets decrease to $30 million or less, and so should enable these advisers to avoid the unnecessary costs and burdens associated with frequent transitions between regulators. The Commission is also adopting a second exemption from the prohibition on Commission registration that permits Commission registration by newly formed advisers that have a reasonable expectation of becoming eligible for Commission registration within 120 days. This exemption will help to ensure that newly formed advisers, including small entity advisers, will not be required to register with numerous states, only to de-register and re-register with the Commission shortly thereafter once their assets under management increase to $25 million.

The FRFA explains that in the proposing release, the Commission also sought comment on other possible alternatives that could meet the need for flexibility for small entities, including whether the transition from state to Commission registration should include a grace period, or whether a state-registered adviser should only have to determine once annually whether it is required to register with the Commission due to an increase in its assets under management. In light of the comments on these issues, the Commission is adopting rule 203A–1(d), which permits (but does not require) a state-registered adviser whose assets under management increase to $30 million to postpone registering with the Commission until 90 days after it has reported the increase in its assets under management in its annual filing with its state regulator. This rule will provide advisers, including small entity advisers, that have assets under management of close to $30 million, additional flexibility in determining if and when to transfer to Commission registration.

The FRFA also discusses the general concern expressed by some commenters that the requirement that small advisers withdraw from Commission registration by filing Form ADV–T will have an adverse competitive effect on small advisers. The FRFA explains that the Commission believes that this concern is too speculative to be considered a significant economic impact on small advisers. Although there is some evidence that smaller advisers believe that holding themselves out as SEC-registered has marketing advantages, the Commission is not aware of evidence that shows the loss of such status would result in the loss of clients of inhibit an

[191] The Commission also considered these alternatives in connection with the proposed rules. *See* IRFA; Investment Advisers Act Rel. No. 1601 (Dec. 20, 1996) (61 FR 68480, 68491–92 (Dec. 27, 1996)) (summary of IRFA).

adviser's ability to market itself to new clients. Moreover, as detailed in the FRFA, the Commission believes that an exemption from the prohibition on Commission registration for small advisers that believe they would be put to a competitive disadvantage if required to de-register would be inconsistent with the purposes of the Coordination Act.

As detailed in the FRFA, the Commission considered exempting small advisers that manage accounts subject to ERISA from the prohibition on Commission registration. Several commenters expressed concern that unless they were permitted to remain registered with the Commission, they effectively would be denied the ability to manage ERISA accounts and would be harmed competitively. The FRFA explains that, although the Commission shares these commenters' concerns,[192] the Commission believes such an exemption would be inconsistent with the purposes of the Coordination Act and outside the scope of the Commission's authority. The grant of exemptive authority in section 203A(c) was designed to permit Commission registration for advisers that are larger, national firms, but do not have $25 million under management. On April 7, 1997, however, Chairman Levitt wrote to the leadership of the Congressional committees with jurisdiction over ERISA, urging that legislation be enacted to make permanent the amendment of ERISA that would permit state-registered advisers to serve as investment managers.[193]

The FRFA is available for public inspection in File No. S7–31–96, and a copy may be obtained by contacting Cynthia G. Pugh, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 10–2, Washington, DC 20549.

[192] For analytical purposes, the Commission assumes that ERISA assets may make up as much as 30% (or $6.8 billion) of the total of approximately $22.7 billion of discretionary assets managed by all advisers that manage less than $25 million of discretionary assets. Assuming that all of those assets would be transferred from those smaller advisers, and that on average the smaller advisers earned a 1% fee to manage those ERISA assets, it is estimated that as much as $68 million in fees could be foregone by small advisers that no longer qualify as investment managers under ERISA. These fees would probably be earned instead by larger advisers that are registered with the Commission.

[193] Letters from Arthur Levitt, Chairman, SEC (Apr. 7, 1997) to The Honorable James M. Jeffords, Chairman, Committee on Labor and Human Resources, U.S. Senate, and The Honorable William F. Goodling, Chairman, Committee on Education and the Work Force, U.S. House of Representatives (available in SEC File No. S7–31–96).

VII. Statutory Authority

The Commission is adopting amendments to rule 203(b)(3)–1 pursuant to the authority set forth in section 206A of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6A).

The Commission is adopting new rule 203A–1 pursuant to the authority set forth in section 203A(a)(1)(A) (15 U.S.C. 80b–3A(a)(1)(A)); section 203A(c) (15 U.S.C. 80b–3A(c)); and section 211(a) (15 U.S.C. 80b–11(a)) of the Investment Advisers Act of 1940.

The Commission is adopting new rule 203A–2 pursuant to the authority set forth in section 203A(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3A(c)).

The Commission is adopting new rule 203A–3 pursuant to the authority set forth in section 202(a)(17) (15 U.S.C. 80b–2(a)(17)) and section 211(a) (15 U.S.C. 80b–11(a)) of the Investment Advisers Act of 1940.

The Commission is adopting new rule 203A–4 pursuant to the authority set forth in section 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11(a)).

The Commission is adopting new rule 203A–5 pursuant to the authority set forth in sections 203(c)(1) and 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1) and 80b–4).

The Commission is adopting amendments to rule 204–1 pursuant to the authority set forth in section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4).

The Commission is adopting amendments to rule 204–2 pursuant to the authority set forth in sections 204 and 206(4) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4 and 80b–6(4)).

The Commission is adopting amendments to rule 205–3 pursuant to the authority set forth in section 206A of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6A).

The Commission is adopting amendments to rules 206(4)–1, 206(4)–2, and 206(4)–4 pursuant to the authority set forth in section 206(4) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(4)).

The Commission is adopting amendments to rule 206(4)–3 pursuant to the authority set forth in sections 204, 206, and 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4, 80b–6, and 80b–11).

The Commission is adopting new rules 222–1 and 222–2 pursuant to the authority set forth in section 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11(a)).

The Commission is adopting amendments to rule 279.3, new Form ADV–T, and amendments to Form ADV pursuant to the authority set forth in sections 203(c)(1) and 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1) and 80b–4).

Text of Rules and Forms

List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

The authority citation for part 275 is revised to read as follows:

Authority: 15 U.S.C. 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6A, 80b–11, unless otherwise noted.

Section 275.203A–1 is also issued under 15 U.S.C. 80b–3A.

Section 275.203A–2 is also issued under 15 U.S.C. 80b–3A.

Section 275.204–2 is also issued under 15 U.S.C. 80b–6.

2. Section 275.203(b)(3)–1 is revised to read as follows:

§ 275.203(b)(3)–1 Definition of ''client'' of an investment adviser.

Preliminary Note to § 203(b)(3)–1

This rule is a safe harbor and is not intended to specify the exclusive method for determining who may be deemed a single client for purposes of section 203(b)(3) of the Act.

(a) *General.* For purposes of section 203(b)(3) of the Act (15 U.S.C. 80b–3(b)(3)), the following are deemed a single client:

(1) A natural person, and:

(i) Any minor child of the natural person;

(ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(iii) All accounts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries; and

(iv) All trusts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries;

(2)(i) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in paragraph (a)(1)(iv) of this section), or other legal organization (any of which are referred to hereinafter as a ''legal organization'') that receives investment advice based on its investment objectives rather than

the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an ''owner''); and

(ii) Two or more legal organizations referred to in paragraph (a)(2)(i) of this section that have identical owners.

(b) *Special Rules.* For purposes of this section:

(1) An owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization, *Provided, however,* that the determination that an owner is a client will not affect the applicability of this section with regard to any other owner;

(2) An owner need not be counted as a client of an investment adviser solely because the investment adviser, on behalf of the legal organization, offers, promotes, or sells interests in the legal organization to the owner, or reports periodically to the owners as a group solely with respect to the performance of or plans for the legal organization's assets or similar matters;

(3) A limited partnership is a client of any general partner or other person acting as investment adviser to the partnership;

(4) Any person for whom an investment adviser provides investment advisory services without compensation need not be counted as a client; and

(5) An investment adviser that has its principal office and place of business outside of the United States must count only clients that are United States residents; an investment adviser that has its principal office and place of business in the United States must count all clients.

(c) *Holding Out.* Any investment adviser relying on this section shall not be deemed to be holding itself out generally to the public as an investment adviser, within the meaning of section 203(b)(3) of the Act (15 U.S.C. 80b–3(b)(3)), solely because such investment adviser participates in a non-public offering of interests in a limited partnership under the Securities Act of 1933.

Sections 275.203A–1 through 275.203A–5 are added to read as follows:

§ 275.203A–1 Eligibility for Commission registration.

(a) *Threshold increased to $30 million of assets under management.* No investment adviser that is registered or required to be registered as an investment adviser in the State in which it maintains its principal office and place of business shall register with the Commission under section 203 of the Act (15 U.S.C. 80b–3), unless the investment adviser:

(1) Has assets under management of not less than $30,000,000, as reported on the Form ADV (17 CFR 279.1) of the investment adviser; or

(2) Is an investment adviser to an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*].

(b) *Exemption for Investment advisers having between $25 and $30 million of assets under management.* Notwithstanding paragraph (a) of this section, an investment adviser that is registered or required to be registered as an investment adviser in the State in which it maintains its principal office and place of business may register with the Commission if the investment adviser has assets under management of not less than $25,000,000 but not more than $30,000,000, as reported on the Form ADV (17 CFR 279.1) of the investment adviser. This paragraph (b) shall not apply to an investment adviser:

(1) To an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or

(2) That is exempted by § 275.203A–2 from the prohibition in section 203A(a) of the Act (15 U.S.C. 80b–3A(a)) on registering with the Commission.

Note to Paragraphs (a) and (b)

Paragraphs (a) and (b) together make registration with the Commission optional for certain investment advisers that have between $25 and $30 million of assets under management.

(c) *Grace period for transition from Commission to State Registration.* An investment adviser registered with the Commission, upon filing an amendment to Form ADV (17 CFR 279.1) that indicates that it would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b–3A(a)) from registering with the Commission, shall be subject to having its registration cancelled pursuant to section 203(h) of the Act (15 U.S.C. 80b–3(h)), *Provided, That* the Commission shall not commence any cancellation proceeding on the basis of the amendment until the expiration of a period of not less than 90 days from the date the investment adviser was required by § 275.204–1(a) to file the amendment.

(d) *Transition From State to Commission Registration.* An investment adviser that is registered with a securities commissioner (or any agency or officer performing like functions) of any State that requires such investment adviser annually to report to it the amount of assets under management pursuant to a form or rule substantially similar to Schedule I to Form ADV (17 CFR 279.1) must register with the Commission within 90 days after the date on which the investment adviser is required to report assets under management of $30,000,000 or more to the state securities commissioner, unless, at the time of registration with the Commission, the investment adviser is prohibited by section 203A(a) of the Act (15 U.S.C. 80b–3A(a)) from registering with the Commission.

Notes to Paragraph (d)

1. An investment adviser may be prohibited by section 203A(a) from registering with the Commission if its assets under management have decreased to an amount less than $25,000,000 during the 90-day period.

2. An investment adviser not eligible to rely on paragraph (d) must register with the Commission promptly when no longer prohibited by section 203A(a) from registering with the Commission.

§ 275.203A–2 Exemptions from prohibition on Commission registration.

The prohibition of section 203A(a) of the Act [15 U.S.C. 80b–3A(a)] shall not apply to:

(a) *Nationally recognized statistical rating organizations.* An investment adviser that is a nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F), and (H) of § 240.15c3–1 of this chapter.

(b)(1) *Pension consultants.* An investment adviser that is a ''pension consultant,'' as defined in this section, with respect to assets of plans having an aggregate value of at least $50,000,000.

(2) An investment adviser is a pension consultant, for purposes of paragraph (b) of this section, if the investment adviser provides investment advice to:

(i) Any employee benefit plan described in section 3(3) of the Employee Retirement Income Security Act of 1974 (''ERISA'') [29 U.S.C. 1002(3)];

(ii) Any governmental plan described in section 3(32) of ERISA (29 U.S.C. 1002(32)); or

(iii) Any church plan described in section 3(33) of ERISA (29 U.S.C. 1002(33)).

(3) In determining the aggregate value of assets of plans, only that portion of a plan's assets for which the investment adviser provided investment advice (including any advice with respect to the selection of an investment adviser to manage such assets) may be included. The value of assets shall be determined

as of the date during the investment adviser's most recent fiscal year that the investment adviser was last employed or retained by contract to provide investment advice to the plan with respect to those assets.

(c) *Investment advisers controlling, controlled by, or under common control with an investment adviser registered with the Commission.* An investment adviser that controls, is controlled by, or is under common control with, an investment adviser eligible to register, and registered with, the Commission (''registered adviser''), provided that the principal office and place of business of the investment adviser is the same as that of the registered adviser. For purposes of this paragraph, control means the power to direct or cause the direction of the management or policies of an investment adviser, whether through ownership of securities, by contract, or otherwise. Any person that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of an investment adviser is presumed to control that investment adviser.

(d) *Investment advisers expecting to be eligible for Commission registration within 120 Days.* An investment adviser that:

(1) Immediately before it registers with the Commission, is not registered or required to be registered with the Commission or a securities commissioner (or any agency or officer performing like functions) of any State and has a reasonable expectation that it would be eligible to register with the Commission within 120 days after the date the investment adviser's registration with the Commission becomes effective;

(2) Includes on Schedule E to its Form ADV (17 CFR 279.1) an undertaking to withdraw from registration with the Commission if, on the 120th day after the date the investment adviser's registration with the Commission becomes effective, the investment adviser would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b–3A(a)) from registering with the Commission; and

(3) Within 120 days after the date the investment adviser's registration with the Commission becomes effective, files an amendment to Form ADV (17 CFR 279.1) revising Schedule I thereto and, if the amendment indicates that the investment adviser would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b–3A(a)) from registering with the Commission, the amendment is accompanied by a completed Form ADV–W (17 CFR 279.2) whereby it withdraws from registration with the Commission.

§ 275.203A–3 Definitions.

For purposes of section 203A of the Act (15 U.S.C. 80b–3A) and the rules thereunder:

(a)(1) *Investment adviser representative.* ''Investment adviser representative'' of an investment adviser means a supervised person of the investment adviser more than ten percent of whose clients are natural persons other than excepted persons described in paragraph (a)(3)(i) of this section.

(2) Notwithstanding paragraph (a)(1) of this section, a supervised person is not an investment adviser representative if the supervised person:

(i) Does not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser; or

(ii) Provides only impersonal investment advice.

(3) For purposes of this section:

(i) *Excepted person* means a natural person who:

(A) Immediately after entering into the investment advisory contract with the investment adviser has at least $500,000 under management with the investment adviser, or

(B) The investment adviser reasonably believes, immediately prior to entering into the advisory contract, has a net worth (together with assets held jointly with a spouse) at the time the contract is entered into of more than $1,000,000.

(ii) ''Impersonal investment advice'' means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

(4) Supervised persons may rely on the definition of ''client'' in § 275.203(b)(3)–1 to identify clients for purposes of paragraph (a)(1) of this section, except that supervised persons need not count clients that are not residents of the United States.

(b) *Place of business.* ''Place of business'' of an investment adviser representative means:

(1) An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; and

(2) Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

(c) *Principal office and place of business.* ''Principal office and place of business'' of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

§ 275.203A–4 Investment advisers registered with a State securities commission.

The Commission shall not assert a violation of section 203 of the Act (15 U.S.C. 80b–3) (or any provision of the Act to which an investment adviser becomes subject upon registration under section 203 of the Act (15 U.S.C. 80b–3)) for the failure of an investment adviser registered with the securities commission (or any agency or office performing like functions) in the State in which it has its principal office and place of business to register with the Commission if the investment adviser reasonably believes that it does not have assets under management of at least $30,000,000 and is therefore not required to register with the Commission.

§ 275.203A–5 Transition rules.

(a) Every investment adviser registered with the Commission on July 8, 1997 shall file a completed Form ADV–T (17 CFR 279.3) no later than July 8, 1997.

(b) If an investment adviser registered with the Commission on July 8, 1997 would be prohibited from registering with the Commission under section 203A(a) of the Act (15 U.S.C. 80b–3A(a)), and is not otherwise exempted by § 275.203A–2 from such prohibition, such investment adviser shall withdraw from registration with the Commission on Form ADV–T (17 CFR 279.3).

(c)(1) Except as provided in paragraph (c)(2) of this section, an investment adviser that indicates on Form ADV–T (17 CFR 279.3) that the investment adviser withdraws from registration with the Commission shall be deemed to have withdrawn from registration as of the later of:

(i) July 8, 1997; or

(ii) The date the investment adviser first files with the Commission Form ADV–T (17 CFR 279.3) or any amendment to Form ADV–T (17 CFR 279.3) that indicates that the investment adviser withdraws from registration with the Commission.

(2) If, prior to the effective date of the withdrawal from registration of an investment adviser on Form ADV–T (17 CFR 279.3), the Commission has instituted a proceeding pursuant to section 203(e) of the Act (15 U.S.C. 80b–3(e)) to suspend or revoke registration,

or a proceeding pursuant to section 203(h) of the Act (15 U.S.C. 80b–3(h)) to impose terms or conditions upon withdrawal, the withdrawal from registration shall not become effective except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

4. Section 275.204–1 is revised to read as follows:

§ 275.204–1 Amendments to application for registration.

(a) Every investment adviser whose registration with the Commission is effective on the last day of its fiscal year shall, within 90 days of the end of its fiscal year, unless its registration has been withdrawn, cancelled, or revoked prior to that day, file:

(1) Schedule I to Form ADV (17 CFR 279.1);

(2) A balance sheet if the balance sheet is required by Item 14 of Part II of Form ADV (17 CFR 279.1); and

(3) An executed page one of Part I of Form ADV (17 CFR 279.1).

(b)(1) If the information contained in the response to Items 1, 2, 3, 4, 5, 8, 11, 13A, 13B, 14A and 14B of Part I of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate for any reason, or if the information contained in response to any question in Items 9 and 10 of Part I, all of Part II (except Item 14), and all of Schedule H of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate in a material manner, the investment adviser shall promptly file an amendment on Form ADV (17 CFR 279.1) correcting the information.

(2) For all other changes not designated in paragraph (b)(1) of this section, the investment adviser shall file an amendment on Form ADV (17 CFR 279.1) updating the information together with the amendments required by paragraph (a) of this section.

5. Section 275.204–2 is amended by revising the introductory text of paragraph (a) and adding paragraph (k) to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) Every investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3) shall make and keep true, accurate and current the following books and records relating to its investment advisory business:

* * * * *

(k) Every investment adviser that registers under section 203 of the Act (15 U.S.C. 80b–3) after July 8, 1997 shall be required to preserve in accordance with this section the books and records the investment adviser had been required to maintain by the State in which the investment adviser had its principal office and place of business prior to registering with the Commission.

Section 275.205–3 is amended by revising the section heading and paragraph (a) to read as follows:

§ 275.205–3 Exemption from the compensation prohibition of section 205(a)(1) for registered investment advisers.

(a) *General.* The provisions of section 205(a)(1) of the Act (15 U.S.C. 80b–5(a)(1)) shall not prohibit any investment adviser from entering into, performing, renewing or extending an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client, *Provided, That* all the conditions in this section are satisfied.

* * * * *

7. Section 275.206(3)–2 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 275.206(3)–2 Agency cross transactions for advisory clients.

(a) An investment adviser, or a person registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) and controlling, controlled by, or under common control with an investment adviser, shall be deemed in compliance with the provisions of sections 206(3) of the Act (15 U.S.C. 80b–6(3)) in effecting an agency cross transaction for an advisory client, if:

* * * * *

8. Section 275.206(4)–1 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 275.206(4)–1 Advertisements by investment advisers.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for any investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), directly or indirectly, to publish, circulate, or distribute any advertisement:

* * * * *

9. Section 275.206(4)–2 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 275.206(4)–2 Custody or possession of funds or securities of clients.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for any investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3) who has custody or possession of any funds or securities in which any client has any beneficial interest, to do any act or take any action, directly or indirectly, with respect to any such funds or securities, unless:

* * * * *

§ 275.206(4)–3 [Amended]

10. In § 275.206(4)–3, paragraph (a)(1)(ii)(C) is amended by revising the cite ''paragraphs (1), (4) or (5)'' to read ''paragraphs (1), (5) or (6)''.

11. Section 275.206(4)–4 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 275.206(4)–4 Financial and disciplinary information that investment advisers must disclose to clients.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for any investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3) to fail to disclose to any client or prospective client all material facts with respect to:

* * * * *

12. Sections 275.222–1 and 222–2 are added to read as follows:

§ 275.222–1 Definitions.

For purposes of section 222 (15 U.S.C. 80b–18a) of the Act:

(a) *Place of business.* ''Place of business'' of an investment adviser means:

(1) An office at which the investment adviser regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; and

(2) Any other location that is held out to the general public as a location at which the investment adviser provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

(b) *Principal place of business.* ''Principal place of business'' of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

§ 275.222–2 Definition of ''client'' for purposes of the national de minimis standard.

For purposes of section 222(d)(2) of the Act (15 U.S.C. 80b–18a(d)(2)), an investment adviser may rely upon the definition of ''client'' provided by § 275.203(b)(3)–1.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

13. The authority citation for part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

§ 279.1 (Form ADV) [Amended]

14. By revising Instructions 2 and 7 of Form ADV (referenced in § 279.1), and by adding Instruction 10 to read as follows:

Note: The text of Form ADV does not and the amendments will not appear in the Code of Federal Regulations.

Form ADV

* * * * *

Form ADV Instructions

* * * * *

2. Organization

This Form contains two parts. Parts I and II are filed with the SEC and the jurisdictions; Part II generally can be given to clients to satisfy the brochure rule. The Form also contains the following schedules:

- Schedule A—for corporations;
- Schedule B—for partnerships;
- Schedule C—for entities that are not sole proprietorships, partnerships or corporations (*e.g.*, limited liability companies and limited liability partnerships);
- Schedule D—for reporting information about individuals under Part I Item 12;
- Schedule E—for continuing responses to Part I items;
- Schedule F—for continuing responses to Part II items;
- Schedule G—for the balance sheet required by Part II Item 14;
- Schedule H—for satisfaction of the brochure rule by sponsors of wrap fee programs; and
- Schedule I—for reporting information related to eligibility for SEC registration.

* * * * *

7. SEC Filings

- Submit filings in triplicate to the Securities and Exchange Commission, Washington DC 20549. There is no fee for registration or amendments.
- **Non-residents**—Rule 0–2 under the Investment Advisers Act of 1940 (17 CFR 275.0–2) covers those non-resident persons named anywhere in Form ADV that must file a consent to service of process and a power of attorney. Rule 204–2(j) under the Investment Advisers Act of 1940 (17 CFR 275.204–2(j)) covers the notice of undertaking on books and records non-residents must file with Form ADV.
- **Federal Information Law and Requirements**—Investment Advisers Act of 1940 sections 203(c), 204, 206, and 211(a) authorize the SEC to collect the information on this Form from applicants for investment adviser registration. The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this Form and makes it publicly available. Only the Social Security Number, which aids in identifying the applicant, is voluntary. The SEC may return as unacceptable Forms that do not include all other information. By accepting this Form, however, the SEC does not make a finding that it has been filled out or submitted correctly. Intentional misstatements or omissions constitute Federal criminal violations under 18 U.S.C. 1001 and 15 U.S.C. 80b–17.

* * * * *

10. Updating

Amendments to this form should be filed:

—promptly for *any* changes in:
Part I—Items 1, 2, 3, 4, 5, 8, 11, 13A, 13B, 14A, and 14B;

—promptly for *material* changes in:
Part I—Items 9, 10, all items of Part II except Item 14, and all Items of Schedule H;

—within 90 days of the end of the fiscal year for the filing of Schedule I and any other changes.

Note: Every investment adviser is required to file Schedule I no later than 90 days after the end of its fiscal year.

* * * * *

§ 279.1 (Form ADV) [Amended]

15. By revising Items 18 and 19 of Form ADV (referenced in § 279.1) to read as follows:

Note: The text of Form ADV does not and the amendments will not appear in the Code of Federal Regulations.

* * * * *

18. Assets Under Management: Discretionary

Does applicant manage client securities portfolios that receive continuous and regular supervisory or management services on a discretionary basis?
Yes ☐ No ☐

If yes, at the end of applicant's last fiscal year:

A. These securities portfolios numbered _____.

B. These securities portfolios, in aggregate market value, totaled $_____.00 (to nearest dollar).

Determine: (i) whether an account is a ''securities portfolio''; (ii) whether a securities portfolio receives ''continuous and regular supervisory or management services''; and (iii) the aggregate market value of such a securities portfolio, in accordance with Instruction 7 of Schedule I to Form ADV. Items 18(B) and 19(B) should total the response (if any) to Part II of Schedule I.

19. Assets Under Management: Non-Discretionary

Does applicant manage or supervise client securities portfolios that receive continuous and regular supervisory or management services on a non-discretionary basis?
Yes ☐ No ☐

If yes, at the end of applicant's last fiscal year:

A. These securities portfolios numbered _____.

B. These securities portfolios, in aggregate market value, totaled $_____.00 (to nearest dollar).

Determine: (i) whether an account is a ''securities portfolio''; (ii) whether a securities portfolio receives ''continuous and regular supervisory or management services''; and (iii) the aggregate market value of such a securities portfolio, in accordance with Instruction 7 of Schedule I to Form ADV. Items 18(B) and 19(B) should total the response (if any) to Part II of Schedule I.

* * * * *

§ 279.1 (Form ADV) [Amended]

16. By adding Schedule I to Form ADV [§ 279.1].

Note: The text of Schedule I will not appear in the Code of Federal Regulations. Schedule I is attached as Appendix B to this Release.

17. Section 279.3 and Form ADV–S are revised to read as follows:

§ 279.3 Form ADV–T, transition form for determining eligibility for Commission registration.

Note: The text of Form ADV–T will not appear in the Code of Federal Regulations. Form ADV–T is attached as Appendix A to this Release.

This form shall be filed pursuant to § 275.203A–5(a) of this chapter by every investment adviser registered with the Commission on July 8, 1997.

By the Commission.

Dated: May 15, 1997.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 8010–01–P

APPENDIX A [NOTE: The text of Form ADV-T will not appear in the Code of Federal Regulations.]

FORM ADV-T

Form for Declaring Eligibility for SEC Registration After Effective Date Of Amendments to Investment Advisers Act of 1940

When completing this form: *Print in ALL CAPS.*
Use Blue or Black Ink.

OMB APPROVAL
OMB Number: 3234-0483
Expires: 3/31/00
Estimated average burden hours per response: 53 minutes

This is an ☐ Initial Filing of Form ADV-T
☐ Amendment to Previously Filed Form ADV-T

Registrant's investment adviser SEC file number:
801- ☐☐☐☐☐

PART I General Information About Registrant

REGISTRANT LABEL AREA *(Attach Registrant Label if Available OR Print in Boxes Provided. See Instruction 1(c))*

(a) Full name of registrant (if individual, state last, first, and middle name):

(b) Mailing address:

(city)

(state) (zip code) (country)

(c) Telephone number:

(d) Name under which business is conducted, if different:

(e) If name is being amended, give previous name:

(f) Address of principal office and place of business: *(See Instruction 2)*

(city)

(state) (zip code) (country)

Name of Registrant:	SEC File Number: 801-

(g) If mailing address on label is incorrect, print correct mailing address here:

(city)

(state) (zip code) (country)

(h) Are either of the addresses in items (b) or (f) being amended in this filing? ☐ Yes ☐ No

(i) Person to contact for further information about this Form:

(name)

(title)

(telephone number)

(j) Current state registration: ***(See Instruction 1(i))***

AL ☐	AK ☐	AZ ☐	AR ☐	CA ☐		CT ☐	DE ☐	DC ☐	FL ☐	GA ☐	HI ☐	ID ☐	
IL ☐	IN ☐		KS ☐	KY ☐	LA ☐	ME ☐	MD ☐	MA ☐	MI ☐	MN ☐	MS ☐	MO ☐	
MT ☐	NE ☐	NV ☐	NH ☐	NJ ☐	NM ☐	NY ☐	NC ☐	ND ☐		OK ☐	OR ☐	PA ☐	
RI ☐	SC ☐	SD ☐	TN ☐	TX ☐	UT ☐	VT ☐	VA ☐	WA ☐	WV ☐	WI ☐			

Puerto Rico ☐ Other (specify):

(k) Pending state registration: ***(See Instruction 1(i))***

AL ☐	AK ☐	AZ ☐	AR ☐	CA ☐		CT ☐	DE ☐	DC ☐	FL ☐	GA ☐	HI ☐	ID ☐	
IL ☐	IN ☐		KS ☐	KY ☐	LA ☐	ME ☐	MD ☐	MA ☐	MI ☐	MN ☐	MS ☐	MO ☐	
MT ☐	NE ☐	NV ☐	NH ☐	NJ ☐	NM ☐	NY ☐	NC ☐	ND ☐		OK ☐	OR ☐	PA ☐	
RI ☐	SC ☐	SD ☐	TN ☐	TX ☐	UT ☐	VT ☐	VA ☐	WA ☐	WV ☐	WI ☐			

Puerto Rico ☐ Other (specify):

Name of Registrant:	SEC File Number: 801-

PART II Eligibility for SEC Registration

The Investment Advisers Supervision Coordination Act, P.L. 104-290, authorizes the Commission to cancel the registration of any investment adviser that does not meet the criteria for SEC registration set forth in new section 203A of the Investment Advisers Act of 1940, as amended ("Advisers Act"). This legislation will become effective on July 8, 1997. This Part II requires the registrant to declare what its status under the Advisers Act will be after July 8, 1997.

Check either (a), (b), or (c):

(a) ☐ After July 8, 1997, registrant will be eligible to maintain its SEC registration.

In order for a registrant to be eligible to maintain its registration with the Commission, registrant must respond affirmatively (by checking the appropriate box or boxes) to at least one of the items (i) through (viii) below:

Registrant:

(i) ☐ has assets under management of $25 million (in U.S. dollars) or more;

Complete the Assets Under Management Worksheet in Part III if "assets under management" is the sole basis of registrant's eligibility for SEC registration (i.e., this item (i) is checked, and none of items (ii) through (viii) below are checked).

(ii) ☐ has its principal office and place of business in Colorado, Iowa, Ohio, or Wyoming *(See Instruction 3);*

(iii) ☐ has its principal office and place of business outside the United States *(See Instruction 3);*

(iv) ☐ is an investment adviser to an investment company registered under the Investment Company Act of 1940 *(See Instruction 4);*

(v) ☐ is a nationally recognized statistical rating organization;

(vi) ☐ is a pension consultant that qualifies for the exemption in rule 203A-2(b);

(vii) ☐ is an investment adviser that controls, is controlled by, or is under common control with, an investment adviser eligible to maintain its registration with the Commission, and whose principal office and place of business is the same as the eligible adviser *(See Instruction 5(b));*

(viii) ☐ has received an order of the Commission exempting registrant from the prohibition on registration with the Commission. A copy of the Commission order is attached. *(See Instruction 5(c))*

(b) ☐ After July 8, 1997, registrant will be subject to having its SEC registration cancelled. Registrant hereby withdraws its registration. *(See Instruction 6)*

(c) ☐ After July 8, 1997, registrant will be eligible to maintain its SEC registration, but nonetheless hereby withdraws its registration. This option is available only to certain registrants reporting between $25 million and $30 million (in U.S. dollars) in assets under management. *(See Instruction 7)*

If this item (c) is checked, complete the Assets Under Management Worksheet in Part III.

Registrants are reminded that it is a violation of section 207 of the Advisers Act to make any untrue statement of a material fact in any report filed with the Commission, or willfully to omit to state in any such report any material fact that is required to be stated therein.

Name of Registrant:	SEC File Number: 801-

PART III Assets Under Management Worksheet

Complete this worksheet if required by Part II *(i.e., if item II(a)(i) is checked yes "(x)" and is the sole basis for registrant's eligibilty for SEC registration, or if item II(c) is checked yes "(x)").*

(a) State the amount of registrant's assets under management: (See Instruction 8)

$ ___,___,___,___,___.00
(in U.S. dollars)

(b) State the amount reported on registrant's current Form ADV, Part I for:

Item 18(B): $ ___,___,___,___,___.00 (in U.S. dollars) (aggregate market value of client securities portfolios managed on a discretionary basis)

Item 19(B): $ ___,___,___,___,___.00 (in U.S. dollars) (aggregate market value of client securities portfolios managed or supervised on a non-discretionary basis)

The Commission recognizes that the amounts reported in Items 18(B) and 19(B) in this Part III(b) may not equal the assets under management reported in Part III(a) above, as a result of differences in timing and valuation of assets.

(c) If, but for the inclusion of client accounts that registrant manages on a non-discretionary basis, registrant would not have $25 million of assets under management, attach a typed statement describing the nature of the supervisory or management services provided to such accounts. ***(See Instruction 9)***

☐ Typed Statement Attached

PART IV Execution

The undersigned represents that he or she has executed this Form on behalf of, and with the authority of, the registrant.

The undersigned and registrant represent that the information and statements contained herein, including exhibits attached hereto and other information filed herewith, all of which are made a part hereof, are current, true, and complete.

Date:
Name of Registrant:
By:
Typed Name and Title:

FORM ADV-T INSTRUCTIONS

Note: Print in ALL CAPS when completing this Form. Use blue or black ink.

Instruction 1. ***General Instructions***

(a) ***How to File.*** This Form must be executed and filed in triplicate with the Securities and Exchange Commission. An exact copy should be retained by registrant. There is no fee for filing this Form.

(b) ***Signatures.*** All copies of the Form filed with the Commission must be executed with a manual signature in Part IV. One of the filed copies must contain an original signature, the other two copies may contain photocopied signatures.

If registrant is	Form ADV-T should be signed by
• a sole proprietor	the proprietor
• a partnership	a general partner of the partnership
• a corporation	an authorized principal officer for the corporation
• any other organization	the managing agent (an authorized person that participates in managing or directing registrant's affairs)

(c) ***Labels.*** The SEC has mailed to each registrant a copy of this Form and a letter containing two labels: a "Registrant Label" and a "Return Label." After completing the Form, attach the Registrant Label to the area of the Form marked "Registrant Label Area." Use the Return Label to address registrant's return envelope to the SEC. If using an overnight express mail delivery service, place the Return Label on an envelope *inside* the delivery service's packaging materials.

If address on label is incorrect, provide the correct address on item (g) of Part I.

If registrant has not received these labels from the Commission, print the information in the Registrant Label Area and mail to:

ATTN: FORM ADV-T
U.S. Securities and Exchange Commission
450 Fifth Street, N.W., Mail Stop A-2
Washington, D.C. 20549

(d) ***Amendments.*** When amending this Form, complete the entire document and circle the number or letter of any items being amended (*i.e.*, if a box is no longer being checked, circle the box to indicate that it previously had been checked).

(e) ***Submission of Incomplete Form.*** A Form that is not prepared and executed in compliance with applicable requirements may be returned as not acceptable for filing. Acceptance of this Form, however, does not constitute any finding that it has been filed as required or that the information submitted is true, correct, or complete.

(f) ***Failure to File Form.*** Failure to file this Form is a violation of rule 203A-5(a) under the Advisers Act. Additionally, failure to file this Form will result in the Commission taking steps to determine whether a registrant is still in existence and is still engaged in business as an investment adviser. If the Commission finds that the registrant is no longer in existence or is not engaged in business as an investment adviser, it may, by order, cancel the registration of such registrant pursuant to section 203(h) of the Advisers Act.

(g) ***SEC's Collection of Information.*** An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 203(c)(1) and 204 of the Advisers Act authorize the Commission to collect the information on this Form from registrants. *See* 15 U.S.C. §§ 80b-3(c)(1) and 80b-4. Filing of this Form is mandatory. The principal purpose of this collection of information is to enable the Commission to determine which investment advisers are eligible to maintain their registration with the Commission, and to provide for the withdrawal from Commission registration for advisers that are no longer eligible. The Commission will maintain files of the

information on this Form and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on page ADV-T-A of this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. The applicable Privacy Act system of records is SEC-2, and the routine uses of the records are set forth at 40 Federal Register 39255 (Aug. 27, 1975) and 41 FR 5318 (Feb. 5, 1976).

(h) ***Terms***. Unless the context clearly indicates otherwise, all terms used in this Form have the same meaning as in the Advisers Act and in the General Rules and Regulations of the Commission thereunder.

(i) ***Current and Pending State Registration***. In item (j) of Part I, check the boxes of all States in which registrant is currently registered as an investment adviser. In item (k) of Part I, check the boxes of all States in which registrant's registration as an investment adviser is pending.

(j) ***For Further Information***. Additional information about the rules referred to in this Form is found in the Commission's adopting release, *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Rel. No. 1633 (May 15, 1997), which may be obtained at the Commission's web site: www.sec.gov. The Commission has prepared a "FAQ" (list of frequently asked questions and answers), which is located at the Commission's web site at http://www.sec.gov/rules/othern/advfaq.htm. For assistance in completing this Form, call the Commission's Form ADV-T Hotline at (202) 942-0691. Registrants with access to the World Wide Web are urged to review the FAQ before calling.

Instruction 2. ***Principal Office and Place of Business***

Registrant's principal office and place of business is the executive office from which the officers, partners, or managers of the registrant direct, control, and coordinate registrant's activities. *See* rule 203A-3(c).

Instruction 3. ***Advisers in Colorado, Iowa, Ohio, or Wyoming; Foreign Advisers***

Under the Advisers Act, a registrant whose principal office and place of business (*see* Instruction 2) is in a State that does not register investment advisers is required to maintain its registration with the Commission, even if none of the criteria for SEC registration (*e.g.*, $25 million of assets under management) is met. Currently, these States are Colorado, Iowa, Ohio, and Wyoming. Registrants that have their principal office and place of business in one of these States should check the box in item (a)(ii) of Part II.

A registrant whose principal office and place of business is located in a country other than the United States (*i.e.*, not in the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States) also is required to maintain its registration with the Commission. Such a registrant should check the box in item (a)(iii) of Part II.

Instruction 4. ***Advisers to Investment Companies***

A registrant should not check item (a)(iv) of Part II unless registrant currently provides advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940. The investment company must be operational, *i.e.*, have assets and shareholders (other than just the organizing shareholders).

Instruction 5. ***Exemptions***

(a) ***Effective Date of Rule 203A-2***. Rule 203A-2, the exemptive rule, will not become effective until sometime shortly after July 8, 1997. In completing Form ADV-T, a registrant should indicate its eligibility for an exemption as though rule 203A-2 was effective on the date the registrant completes the Form. During the period between July 8, 1997 and the effective date of rule 203A-2, the Commission will not cancel the registration of any adviser that will be eligible for an exemption.

(b) ***Affiliated Advisers***. A registrant that controls, is controlled by, or is under common control with, an investment adviser that is eligible to maintain its registration with the Commission after July 8, 1997 (the "eligible adviser") is itself eligible to maintain its registration with the Commission if the principal office and place of business of the registrant is the same as that of the eligible adviser. *See* rule 203A-2(c).

(c) *Advisers With SEC Exemptive Order*. If a copy of the exemptive order is not available, the "803-" application number and date of the Commission's order may be submitted in lieu of a copy of the actual order.

Instruction 6. *Withdrawal Under Part II, Item (b)*

If item (b) of Part II is checked, registrant's investment adviser registration with the SEC will be withdrawn effective as of the later of (i) July 8, 1997 or (ii) the date the registrant first files this Form or any amendment to the Form that indicates that registrant withdraws its registration. Registrants checking item (b) of Part II *should not* separately file Form ADV-W.

Instruction 7. *Advisers in $25 Million - $30 Million "Window"*

Under rule 203A-1(b), certain investment advisers that have assets under management of not less than $25 million but not more than $30 million may (but are not required to) register with the Commission. Such an adviser that chooses not to register with the Commission should check item (c) of Part II. The option not to register is not available to an adviser that is required to be registered with the Commission regardless of the amount of its assets under management, *i.e.*, an adviser (i) to a registered investment company, (ii) that is not regulated (or required to be regulated) as an investment adviser in the State in which it maintains its principal office and place of business (*see* Instruction 2), or (iii) that is exempted by rule 203A-2 from the prohibition on registering with the Commission (NRSROs, pension consultants, and certain advisers controlling, controlled by, or under common control with SEC-registered advisers).

If item (c) of Part II is checked, registrant's investment adviser registration with the SEC will be withdrawn effective as of the later of (i) July 8, 1997 or (ii) the date registrant first files this Form or any amendment to this Form that indicates that registrant withdraws its registration.

Instruction 8. *Determining Assets Under Management*

Not all registrants are required to provide the amount of their assets under management. A registrant must complete the Assets Under Management Worksheet in Part III only if:

- item II(a)(i) is checked yes "(x)" and the amount of assets registrant has under management is the sole basis for registrant's eligibility for SEC registration (*i.e*, registrant has not checked any of items II(a)(ii) through (viii)), or
- item II(c) is checked yes "(x)."

In determining the amount of assets registrant has under management, include the total value of "**securities portfolios**" (or portions thereof) for which registrant provides "**continuous and regular supervisory or management services**" as of the date of filing this Form.

(a) *Securities Portfolios*. An account is a securities portfolio if at least 50% of the total value of the account consists of securities. For purpose of this 50% test, registrant may treat cash and cash equivalents (*i.e.*, bank deposits, certificates of deposit, bankers acceptances, and similar bank instruments) as securities.

Registrants may include securities portfolios that are: (i) family or proprietary accounts of the registrant (unless registrant is a sole proprietor, in which case the personal assets of the sole proprietor must be excluded); (ii) accounts for which registrant receives no compensation for its services; and (iii) accounts of clients who are not U.S. residents.

(b) *Value of Portfolio*. Include the entire value of each securities portfolio (or portion thereof) for which registrant provides "continuous and regular supervisory or management services." If registrant provides continuous and regular supervisory or management services for only a portion of a securities portfolio, include as assets under management only the portion of the securities portfolio that receives such services. Exclude, for example, a portion of an account:

(1) under management by another person; or

(2) that consists of real estate or businesses the operations of which are "managed" on behalf of a client but not as an investment.

No deduction is required for securities purchased on margin.

(c) ***Continuous and Regular Supervisory or Management Services.***

General Criteria. A registrant provides continuous and regular supervisory or management services with respect to a securities portfolio if the registrant either --

(1) has discretionary authority over and provides ongoing supervisory or management services with respect to the account; or

(2) does not have discretionary authority over the account, but has an ongoing responsibility to select or make recommendations, based upon the needs of the client, as to specific securities or other investments the account may purchase or sell and, if such recommendations are accepted by the client, is responsible for arranging or effecting the purchase or sale.

Factors. Registrants should consider the following factors in evaluating whether continuous and regular supervisory or management services are being provided.

(1) ***Terms of the advisory contract.*** A provision in an advisory contract by which the registrant agrees to provide ongoing management services suggests that the account receives such services. Other provisions in the contract, or the actual management of the registrant, however, may rebut such a suggestion.

(2) ***Form of compensation.*** A form of compensation based on the average value of assets under management over a specified period of time would suggest that the registrant provides continuous and regular supervisory or management services. On the other hand, a form of compensation based upon time the registrant spends with a client during a client visit would suggest otherwise. A retainer based upon a percentage of assets covered by a financial plan would not suggest that the registrant provides continuous and regular supervisory or management services.

(3) ***The management practice of the registrant.*** The extent to which the registrant is actively managing assets or providing advice bears on whether the services are continuous and regular supervisory or management services. However, infrequent trades (*e.g.*, based on a "buy and hold" strategy) should not alone form the basis for a determination that the services are not provided on a continuous and regular basis.

Examples. To assist registrants, the Commission is providing examples of accounts that may receive continuous and regular supervisory or management services, based upon the criteria and factors discussed above. These examples are not exclusive.

Accounts that may receive continuous and regular supervisory or management services:

(1) Accounts for which the registrant allocates assets of a client among mutual funds (even if it does so without a grant of discretionary authority, but only if the general criteria for non-discretionary accounts is satisfied and the factors suggest that the account receives continuous and regular supervisory or management services); and

(2) Accounts for which the registrant allocates assets among other managers -- but <u>only</u> under a grant of discretionary authority by which it may hire and fire managers and reallocate assets among them.

Accounts that do not receive continuous and regular supervisory or management services:

(1) Accounts for which the registrant provides market timing recommendations (to buy or sell) but has no ongoing management responsibilities;

(2) Accounts for which the registrant provides only impersonal advice, *e.g.*, market newsletters;

(3) Accounts for which the registrant provides an initial asset allocation, without continuous and regular monitoring and reallocation; and

(4) Accounts for which the registrant provides advice only on an intermittent or periodic basis, upon the request of the client, or in response to some market event, *e.g.*, an account that is reviewed and adjusted on a quarterly basis.

(d) ***Value of Assets Under Management.*** Determine the total amount of assets under management based on the current market value of the assets as determined within 90 business days prior to the date of filing this Form. Current market value should be determined using the same method as that used to determine the account value reported to clients or fees for investment advisory services.

(e) ***Example.*** To assist registrants, the Commission is providing an example of the method of determining whether a client account may be included as "assets under management."

Example:

A client's portfolio consists of the following:

$ 6,000,000	stocks and bonds
$ 1,000,000	cash and cash equivalents
$ 3,000,000	non-securities (collectibles, commodities, real estate, etc.)
$10,000,000	Total Assets

First, is the account a "securities portfolio?" The account is a securities portfolio because securities as well as cash and cash equivalents (which the registrant has chosen to include as securities) ($6,000,000 + $1,000,000 = $7,000,000) comprise at least 50% of the value of the account (here, 70%). *(See Instruction 8(a))*

Second, does the account receive "continuous and regular supervisory or management services?" The entire account is managed on a discretionary basis and is provided ongoing supervisory and management services, and therefore receives continuous and regular supervisory or management services. *(See Instruction 8(c))*

Third, what is the entire value of the account? The entire value of the account ($10,000,000) is included in the calculation of the adviser's total assets under management.

Instruction 9. ***Reliance on Non-Discretionary Assets***

If, but for the inclusion of client accounts that registrant manages on a non-discretionary basis, registrant would not have $25 million of assets under management (and has no other basis of eligibility for Commission registration), registrant must attach to this Form ADV-T a typed statement describing the nature of the supervisory or management services provided to such non-discretionary accounts. For example, a registrant that has $30 million of discretionary and $5 million of non-discretionary assets under management would not be required to attach the statement. A registrant that has $20 million of discretionary and $5 million of non-discretionary assets under management would attach a statement, but the statement would only describe the nature of the supervisory or management services provided to the $5 million of non-discretionary assets. A registrant that has $20 million of discretionary and $5 million of non-discretionary assets under management, but that is an adviser to a registered investment company (and therefore has an additional basis of eligibility for SEC registration) would not be required to attach the statement.

APPENDIX B [NOTE: The text of Schedule I will not appear in the Code of Federal Regulations.]

SCHEDULE I

Schedule for Declaring Eligibility for SEC Registration

OMB APPROVAL
OMB Number: 3235-0490
Expires: 4/30/00
Estimated average burden hours per response: 52 minutes

Applicant:	SEC File No. 801-	Date: MM/DD/YY

Part I Eligibility for SEC Registration

Section 203(h) of the Investment Advisers Act of 1940 ("Advisers Act") authorizes the Commission to cancel or deny the registration of any investment adviser that does not meet the criteria for SEC registration set forth in section 203A of the Advisers Act. This Part I requires applicant to declare whether it is eligible, or continues to be eligible, for Commission registration.

Check either (a) or (b):

(a) ☐ Applicant is eligible (or will remain eligible) for SEC registration.

In order for an applicant to be eligible (or remain eligible) for SEC registration, applicant must respond affirmatively (by checking the appropriate box or boxes) to at least one of the items (i) through (ix) below:

Applicant:

(i) ☐ has assets under management of $25 million (in U.S. dollars) or more;

Report assets under management in Part II if "assets under management" is the sole basis of applicant's eligibility for SEC registration (i.e., this item (i) is checked, and none of items (ii) through (ix) below are checked).

(ii) ☐ has its principal office and place of business in Colorado, Iowa, Ohio, or Wyoming (*See Instruction 3*);

(iii) ☐ has its principal office and place of business outside the United States (*See Instruction 3*);

(iv) ☐ is an investment adviser to an investment company registered under the Investment Company Act of 1940 (*See Instruction 4*);

(v) ☐ is a nationally recognized statistical rating organization;

(vi) ☐ is a pension consultant that qualifies for the exemption in rule 203A-2(b));

(vii) ☐ is an investment adviser that controls, is controlled by, or is under common control with, an investment adviser eligible to maintain its registration with the Commission, and whose principal office and place of business is the same as the eligible adviser (*See Instruction 5(a)*);

(viii) ☐ is a newly formed adviser relying on rule 203A-2(d) (*See Instruction 5(b)*);

(ix) ☐ has received an order of the Commission exempting applicant from the prohibition on registration with the Commission.
Application number: 803- _____
Date of Commission's order: _____

(b) ☐ Registrant is no longer eligible for SEC registration. (*See Instruction 6*)

Applicant:	SEC File No. 801-	Date: MM/DD/YY

Part II Assets Under Management

Report assets under management if required by Part I (*i.e.*, if item I(a)(i) is checked yes "(x)" and is the sole basis for applicant's eligibility for SEC registration).

(a) State the amount of applicant's assets under management (in U.S. dollars): (*See Instruction 7*)

$_____.00 as of _____ (date)
(in U.S. dollars)

Applicants are reminded that it is a violation of section 207 of the Advisers Act to make any untrue statement of a material fact in any report filed with the Commission, or willfully to omit to state in any such report any material fact that is required to be stated therein.

SCHEDULE I INSTRUCTIONS

Instruction 1. ***General Instructions***

(a) ***SEC's Collection of Information***. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 203(c)(1) and 204 of the Advisers Act authorize the Commission to collect the information on this Schedule from applicants. *See* 15 U.S.C. §§ 80b-3(c)(1) and 80b-4. Filing of this Schedule is mandatory. The principal purpose of this collection of information is to enable the Commission to determine which investment advisers are eligible to maintain their registration with the Commission, and to provide for the withdrawal from Commission registration for advisers that are no longer eligible. The Commission will maintain files of the information on this Schedule and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on page one of this Schedule, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. The applicable Privacy Act system of records is SEC-2, and the routine uses of the records are set forth at 40 Federal Register 39255 (Aug. 27, 1975) and 41 FR 5318 (Feb. 5, 1976).

(b) ***For Further Information***. Additional information about the rules referred to in this Schedule is found in the Commission's adopting release, *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Rel. No. 1633 (May 15, 1997).

Instruction 2. ***Principal Place of Business***

Applicant's principal place of business reported in Form ADV, Part I, Item 2.A. is the applicant's principal office and place of business, *i.e.*, the executive office from which the officers, partners, or managers of the applicant direct, control, and coordinate applicant's activities. *See* rule 203A-3(c).

Instruction 3. ***Advisers in Colorado, Iowa, Ohio, or Wyoming; Foreign Advisers***

Under the Advisers Act, an applicant whose principal office and place of business (*see* Instruction 2) is in a State that does not register investment advisers is required to register with the Commission, even if none of the criteria for SEC registration (*e.g.*, $25 million of assets under management) is met. Currently, these States are Colorado, Iowa, Ohio, and Wyoming. Applicants that have their principal office and place of business in one of these States should check the box in item (a)(ii) of Part I.

An applicant whose principal office and place of business is located in a country other than the United States (*i.e.*, not in the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States) also is required to register with the Commission. Such an applicant should check the box in item (a)(iii) of Part I.

Instruction 4. ***Advisers to Investment Companies***

An applicant should not check item (a)(iv) of Part I unless applicant currently provides advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940. The investment company must be operational, *i.e.*, have assets and shareholders (other than just the organizing shareholders).

Instruction 5. ***Exemptions***

(a) ***Affiliated Advisers.*** An applicant that controls, is controlled by, or is under common control with, an investment adviser that is eligible to maintain its registration with the Commission after July 8, 1997 (the "eligible adviser") is itself eligible to maintain its registration with the Commission if the principal office and place of business of the applicant is the same as that of the eligible adviser. *See* rule 203A-2(c).

(b) ***Newly Formed Advisers.*** A newly formed adviser may register with the Commission at the time of its formation if the adviser has a reasonable expectation that within 120 days of registration it will become eligible for Commission registration. At the end of the 120-day period, the adviser is required to file an amended Schedule I. If the adviser indicates on the amended Schedule I that it has not become eligible to register with the Commission, the adviser is required to file a Form ADV-W concurrently with the Schedule I, thereby withdrawing from registration with the Commission. An applicant registering with the Commission in reliance on this exemption must include on Schedule E of Form ADV an undertaking to withdraw from registration if, at the end of the 120-day period, the adviser would be prohibited from Commission registration. *See* rule 203A-2(d).

Instruction 6. ***Part I, Item (b)***

If item (b) of Part I is checked, registrant's investment adviser registration with the SEC must be withdrawn within 90 days after the date this Schedule I was required by rule 204-1(a) to have been filed with the Commission. Thus, registrant's registration must be withdrawn no later than 180 days after the end of its fiscal year. If registrant's registration is not withdrawn within this time period, registrant will be subject to having its registration cancelled pursuant to section 203(h) of the Advisers Act. *See* rule 203A-1(c).

Instruction 7. ***Determining Assets Under Management***

Not all applicants are required to provide the amount of their assets under management. An applicant must report its assets under management in Part II only if item I(a)(i) is checked yes "(x)" and the amount of assets applicant has under management is the sole basis for applicant's eligibility for SEC registration (*i.e*, applicant has not checked any of items I(a)(ii) through (ix)).

In determining the amount of assets applicant has under management, include the total value of "**securities portfolios**" (or portions thereof) for which applicant provides "**continuous and regular supervisory or management services**" as of the date of filing this Schedule.

(a) ***Securities Portfolios.*** An account is a securities portfolio if at least 50% of the total value of the account consists of securities. For purpose of this 50% test, applicant may treat cash and cash equivalents (*i.e.*, bank deposits, certificates of deposit, bankers acceptances, and similar bank instruments) as securities.

Applicants may include securities portfolios that are: (i) family or proprietary accounts of the applicant (unless applicant is a sole proprietor, in which case the personal assets of the sole proprietor must be excluded); (ii) accounts for which applicant receives no compensation for its services; and (iii) accounts of clients who are not U.S. residents.

(b) ***Value of Portfolio.*** Include the entire value of each securities portfolio (or portion thereof) for which applicant provides "continuous and regular supervisory or management services." If applicant provides continuous and regular supervisory or management services for only a portion of a securities portfolio, include as assets under management only the portion of the securities portfolio that receives such services. Exclude, for example, a portion of an account:

(1) under management by another person; or

(2) that consists of real estate or businesses the operations of which are "managed" on behalf of a client but not as an investment.

No deduction is required for securities purchased on margin.

(c) ***Continuous and Regular Supervisory or Management Services.***

General Criteria. An applicant provides continuous and regular supervisory or management services with respect to a securities portfolio if the applicant either --

(1) has discretionary authority over and provides ongoing supervisory or management services with respect to the account; or

(2) does not have discretionary authority over the account, but has an ongoing responsibility to select or make recommendations, based upon the needs of the client, as to specific securities or other investments the account may purchase or sell and, if such recommendations are accepted by the client, is responsible for arranging or effecting the purchase or sale.

Factors. Applicants should consider the following factors in evaluating whether continuous and regular supervisory or management services are being provided.

(1) ***Terms of the advisory contract.*** A provision in an advisory contract by which the applicant agrees to provide ongoing management services suggests that the account receives such services. Other provisions in the contract, or the actual management of the applicant, however, may rebut such a suggestion.

(2) ***Form of compensation.*** A form of compensation based on the average value of assets under management over a specified period of time would suggest that the applicant provides continuous and regular supervisory or management services. On the other hand, a form of compensation based upon time the applicant spends with a client during a client visit would suggest otherwise. A retainer based upon a percentage of assets covered by a financial plan would not suggest that the applicant provides continuous and regular supervisory or management services.

(3) ***The management practice of the applicant.*** The extent to which the applicant is actively managing the assets or providing advice bears on whether the services are continuous and regular supervisory or management services. However, infrequent trades (*e.g.*, based on a "buy and hold" strategy) should not alone form the basis for a determination that the services are not provided on a continuous and regular basis.

Examples. To assist applicants, the Commission is providing examples of accounts that may receive continuous and regular supervisory or management services, based upon the criteria and factors discussed above. These examples are not exclusive.

Accounts that may receive continuous and regular supervisory or management services:

(1) Accounts for which the applicant allocates assets of a client among mutual funds (even if it does so without a grant of discretionary authority, but only if the general criteria for non-discretionary accounts is satisfied and the factors suggest that the account receives continuous and regular supervisory or management services); and

(2) Accounts for which the applicant allocates assets among other managers -- but <u>only</u> under a grant of discretionary authority by which it may hire and fire managers and reallocate assets among them.

Accounts that do not receive continuous and regular supervisory or management services:

(1) Accounts for which the applicant provides market timing recommendations (to buy or sell) but has no ongoing management responsibilities;

(2) Accounts for which the applicant provides only impersonal advice, *e.g.*, market newsletters;

(3) Accounts for which the applicant provides an initial asset allocation, without continuous and regular monitoring and reallocation; and

(4) Accounts for which the applicant provides advice only on an intermittent or periodic basis, upon the request of the client, or in response to some market event, *e.g.*, an account that is reviewed and adjusted on a quarterly basis.

(d) ***Value of Assets Under Management.*** Determine the total amount of assets under management based on the current market value of the assets as determined within 90 business days prior to the date of filing this Schedule. Current market value should be determined using the same method as that used to determine the account value reported to clients or fees for investment advisory services.

(e) ***Example.*** To assist applicants, the Commission is providing an example of the method of determining whether a client account may be included as "assets under management."

Example:

A client's portfolio consists of the following:

$ 6,000,000	stocks and bonds
$ 1,000,000	cash and cash equivalents
$ 3,000,000	non-securities (collectibles, commodities, real estate, etc.)
$10,000,000	Total Assets

First, is the account a "securities portfolio?" The account is a securities portfolio because securities as well as cash and cash equivalents (which the applicant has chosen to include as securities) ($6,000,000 + $1,000,000 = $7,000,000) comprise at least 50% of the value of the account (here, 70%). *(See Instruction 7(a))*

Second, does the account receive "continuous and regular supervisory or management services?" The entire account is managed on a discretionary basis and is provided ongoing supervisory and management services, and therefore receives continuous and regular supervisory or management services. *(See Instruction 7(c))*

Third, what is the entire value of the account? The entire value of the account ($10,000,000) is included in the calculation of the adviser's total assets under management.

Instruction 8. ***Reliance on Non-Discretionary Assets***

If, but for the inclusion of client accounts that applicant manages on a non-discretionary basis, applicant would not have $25 million of assets under management (and has no other basis of eligibility for Commission registration), applicant must attach to this Schedule I a typed statement describing the nature of the supervisory or management services provided to such non-discretionary accounts. For example, an applicant that has $30 million of discretionary and $5 million of non-discretionary assets under management would not be required to attach the statement. An applicant that has $20 million of discretionary and $5 million of non-discretionary assets under management would attach a statement, but the statement would only describe the nature of the supervisory or management services provided to the $5 million of non-discretionary assets. An applicant that has $20 million of discretionary and $5 million of non-discretionary assets under management, but that is an adviser to a registered investment company (and therefore has an additional basis of eligibility for SEC registration) would not be required to attach the statement.

[FR Doc. 97–13284 Filed 5–21–97; 8:45 am]
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federal register

Thursday
May 22, 1997

Part III

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee Meeting; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on June 12–13, 1997. The meeting will be held at the National Institutes of Health (NIH), Building 31C, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on June 12, 1997, at approximately 9 a.m., and will recess at approximately 5 p.m. The meeting will reconvene on June 13, 1997, at approximately 9:00 a.m. and will adjourn at approximately 5 p.m. The meeting will be open to the public. Agenda items will include: (1) General discussion regarding a Human Gene Transfer Protocol #9703–179 entitled: A Phase I Study of Active Immunotherapy with Carcinoembryonic Antigen RNA-Pulsed Autologous a Human Cultured Dendritic Cells in Patients with Metastatic Malignancies Expressing Carcinoembryonic Antigen, Principal Investigator H. Kim Lyerly, M.D., Duke University, Durham, North Carolina (Note: NIH Office of Recombinant DNA Activities has determined that Recombinant DNA Advisory Committee review of the protocol is not necessary, the protocol will be reviewed for approval only by the Food and Drug Administration); (2) Discussion regarding Genetic Vaccines Against Cancer-Related Antigens and Oncogene Proteins; (3) Discussion regarding Criteria for RAC Review of Novel Human Gene Transfer Protocols; (4) Discussion regarding Streamlined National Institutes of Health and Food and Drug Administration Submission Format and Revisions to Appendix M, *The Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into the Genome of One or More Human Subjects (Points to Consider);* (5) Discussion regarding Human Gene Transfer Protocols that are Exempt from NIH Registration (Footnote M–VI, *Points to Consider*); (6) Presentation Regarding Definition of Standards for Viral Vector Quantification by Estuardo Aguilar-Cordova, Ph.D., Texas Childrens Hospital, Houston, Texas; and (7) other matters to be considered by the Committee. Attendance by the public will be limited to space available.

Debra W. Knorr, Acting Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone (301) 496–9838, FAX (301) 496–9839, will provide summaries of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Knorr in advance of the meeting.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines.* In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: May 14, 1997.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 97–13399 Filed 5–21–97; 8:45 am]

BILLING CODE 4140–01–M

federal register

Thursday
May 22, 1997

Part IV

Department of Education

34 CFR Part 97

Protection of Human Subjects; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 97

RIN 1880–AA75

Protection of Human Subjects

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Department's regulations governing the protection of human research subjects to add special protections for children who are involved as subjects of research. These amendments to the Department's regulations are needed to secure additional protections for children who are involved as subjects of research. The proposed regulations would, for research involving children as subjects, remove exemptions for certain kinds of research, modify the informed consent provisions, and further limit the risks to which children may be made vulnerable. These amendments will make the Department's policy regarding the protection of children as research subjects consistent with the regulations of the Department of Health and Human Services and the Federal Policy for the Protection of Children as practiced by other research agencies of the Federal government.

DATES: Comments must be received on or before July 21, 1997.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Kent H. Hannaman, Attention: Protection of Human Subjects in Research, U.S. Department of Education, Seventh and D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Comments may also be sent through the Internet to (Human__Subjects@ed.gov).

FOR FURTHER INFORMATION CONTACT: Ivor Pritchard, U.S. Department of Education, 555 New Jersey Avenue, N.W., Washington, D.C. 20208–5573. Telephone: (202) 219–2231. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary proposes to adopt for the Department of Education regulations that are already in effect for research supported or conducted by the Department of Health and Human Services (DHHS), Subpart D—Additional DHHS Protections for Children Involved as Subjects in Research (Subpart D). These regulations contain provisions specifically designed to protect children who are involved in research as subjects. Children are involved as subjects of important research that will benefit the Nation's children. Balancing the importance of this research with the needs of children, the Secretary believes that these protections should be added because the research activities supported by the Department often include children, and the Department has a particular interest in protecting the welfare of children.

Current Government-Wide and ED Policy

The Federal Policy requires institutions receiving support from Federal agencies or offices for research activities involving human subjects to assure that covered research activities will be reviewed by an Institutional Review Board (IRB). The purpose of the IRB review is to ensure that persons not involved in carrying out the research activities determine that adequate provisions have been made to protect the research subjects involved in the proposed activities. The adequacy of the protections is judged by the IRB, which consists of qualified individuals at the institutions where the research takes place, and by other individuals in the local community who are familiar with the research population and with local community standards.

Additional Protections Afforded by Subpart D

The amendments regarding children substantially modify the Federal Policy in three ways. First, they remove an exemption from IRB review of research involving surveys, interviews, or observation of public behavior if the research investigators interact with subjects who are children. Second, they modify the procedures for obtaining informed consent from research subjects who are children, by including procedures for proxy consent by the parent or guardian, and assent by the children themselves. Third, they limit the kind of risks to which children may be made vulnerable during the research activity, if the child's participation in the research contains no prospects of benefits to the individual child. IRBs are charged with the responsibility of ensuring that these modifications are included in research activities taking place at their institutions, or sponsored by their institutions, whenever children are involved as subjects.

The Secretary believes that adopting Subpart D protections through rulemaking is an important part of meeting the Department's obligation to fully implement the Federal Policy. Children are a primary focus of the Department's mission and activities, and protections designed specifically for children serving as research subjects are appropriate. With the Subpart D protections, children involved as research subjects would have more protections than they would have if Subpart D is not adopted, and the Secretary believes that there is good reason to protect children in this manner. In addition, the adoption of the Subpart D protections would make the Department's policy more consistent with that of DHHS and certain other Federal agencies and offices, which was the original intent of the Common Rule.

The Secretary considered but rejected implementing Subpart D on a case-by-case basis as a matter of policy without formal rulemaking. The effect of the case-by-case approach would be to make Subpart D application a matter of negotiation between the Department and some institutions receiving support for relevant research activities. It would be more costly, burdensome, and confusing for researchers and institutions requesting Department support and for the Department's own administration of the Federal Policy. It would also increase the possibility that sponsored research projects would not be fully reviewed for appropriate protections.

The Secretary recognizes that this action will produce some additional costs and administrative burdens. More resources will be expended inside and outside the Government to ensure that children who are research subjects are protected. More research protocols will be reviewed by Institutional Review Boards, the protocols will have to meet higher standards for approval with respect to the potential benefits to the individual subjects where the research poses more than minimal risk, and parental consent and a child's assent will be required when it otherwise would not be. It is not possible to provide an accurate estimate of the additional costs. The Secretary, however, believes that the important benefits of providing consistent protections for children as research subjects outweigh the burden of additional administrative costs.

The Secretary also recognizes that some additional protections for children as education research subjects exist even if Subpart D is not adopted. The applicability of DHHS multiple project assurances [1] at some three hundred

[1] DHHS issues multiple project assurances to some institutions. A multiple project assurance is an agreement between DHHS and an institution that sets forth the institution's commitment to employ the basic ethical principles of "The Ethical Principles and Guidelines for the Protection of

institutions means that education research supported by those institutions is already regulated by Subpart D. The Protection of Pupil Rights Amendment (PPRA) (20 U.S.C. 1232h) and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) both provide some protections. However, the safeguards provided by the PPRA and the FERPA are enforced retrospectively, after infractions have occurred. In contrast, these regulations assure compliance before research is initiated. Therefore, the Secretary believes that adoption of Subpart D is important to ensure the highest degree of protection for children as human research subjects.

Executive Order 12866

Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering the Department's programs effectively and efficiently. As stated under the heading Paperwork Reduction Act of 1995 in this preamble, this proposed rule contains no paperwork burdens.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Summary of Potential Costs and Benefits

The potential costs and benefits of these proposed regulations are discussed elsewhere in this preamble under the heading Additional Protections Afforded by Subpart D.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 97.401 *To what do these regulations apply?*) (4) Is the description of the regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 5121, FB–10B), Washington, D.C. 20202–2241.

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. For the most part, these revisions are adopted to effect greater consistency in the protection of children as human research subjects. The proposed revisions would not have a significant impact on the entities affected. The applicability of Department of Health and Human Services multiple project assurances at some three hundred institutions means that education research supported at those institutions is already regulated by Subpart D. The institutions that do not have multiple project assurances with DHHS should find the consistent approach to safeguarding children as research subjects a workable approach to increased protections.

Paperwork Reduction Act of 1995

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no additional information collection requirements. (The recordkeeping requirements of Subpart A, for which DHHS has received OMB approval on behalf of affected agencies, encompass recordkeeping requirements of Subpart D.)

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 Room 5624, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational 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 97

Human subjects, Reporting and recordkeeping Research, requirements.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: February 18, 1997.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend Part 97 of Title 34 of the Code of Federal Regulations as follows:

PART 97—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for Part 97 is revised to read as follows:

Authority: 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b).

§§ 97.101, 97.102, 97.103, 97.104, 97.107, 97.108, 97.109, 97.110, 97.111, 97.112, 97.113, 97.114, 97.115, 97.116, 97.117, 97.118, 97.119, 97.120, 97.121, 97.122, 97.123, 97.124 [Redesignated as Subpart A]

Subpart B—[Reserved]

Subpart C—[Reserved]

2. Sections 97.101 through 97.124 are designated as ''Subpart A—Federal

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Human Subjects of Research'', known as the Belmont Report, and to comply with DHHS regulations for the protection of human subjects. The assurances are issued for a five-year period and are approved for Federal-wide use. Institutions with DHHS-approved multiple project assurances must abide by the provisions of Title 45 CFR Part 46 Subpart D.

Policy for the Protection of Human Subjects (Basic ED Policy for Protection of Human Research Subjects)'' and Subparts B and C are reserved.

* * * * *

3. Sections 97.101, 97.102, 97.103, and 97.107 through 97.124 are amended by adding authority citations to read as follows:

(**Authority:** 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b).)

4. A new Subpart D containing §§ 97.401 through 97.409 is added to read as follows:

Subpart D—Additional ED Protections for Children Who Are Subjects in Research

Sec.
97.401 To what do these regulations apply?
97.402 Definitions.
97.403 IRB duties.
97.404 Research not involving greater than minimal risk.
97.405 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.
97.406 Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition.
97.407 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children.
97.408 Requirements for permission by parents or guardians and for assent by children.
97.409 Wards.

Subpart D—Additional ED Protections for Children Who Are Subjects in Research

§ 97.401 To what do these regulations apply?

(a) This subpart applies to all research involving children as subjects conducted or supported by the Department of Education.

(1) This subpart applies to research conducted by Department employees.

(2) This subpart applies to research conducted or supported by the Department of Education outside the United States, but in appropriate circumstances the Secretary may, under § 97.101(i), waive the applicability of some or all of the requirements of the regulations in this subpart for that research.

(b) Exemptions in § 97.101 (b)(1) and (b)(3) through (b)(6) are applicable to this subpart. The exemption in § 97.101(b)(2) regarding educational tests is also applicable to this subpart. The exemption in § 97.101(b)(2) for research involving survey or interview procedures or observations of public behavior does not apply to research covered by this subpart, except for research involving observation of public behavior when the investigator or investigators do not participate in the activities being observed.

(c) The exceptions, additions, and provisions for waiver as they appear in § 97.101 (c) through (i) are applicable to this subpart.

(**Authority:** 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b).)

§ 97.402 Definitions.

The definitions in § 97.102 apply to this subpart. In addition, the following definitions also apply to this subpart:

(a) *Children* are persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted.

(b) *Assent* means a child's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent.

(c) *Permission* means the agreement of parent(s) or guardian to the participation of their child or ward in research.

(d) *Parent* means a child's biological or adoptive parent.

(e) *Guardian* means an individual who is authorized under applicable State or local law to consent on behalf of a child to general medical care.

(**Authority:** 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b).)

§ 97.403 IRB duties.

In addition to other responsibilities assigned to IRBs under this part, each IRB shall review research covered by this subpart and approve only research that satisfies the conditions of all applicable sections of this subpart.

(**Authority:** 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b).)

§ 97.404 Research not involving greater than minimal risk.

ED conducts or funds research in which the IRB finds that no greater than minimal risk to children is presented, only if the IRB finds that adequate provisions are made for soliciting the assent of the children and the permission of their parents or guardians, as set forth in § 97.408.

(**Authority:** 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b).)

§ 97.405 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.

ED conducts or funds research in which the IRB finds that more than minimal risk to children is presented by an intervention or procedure that holds out the prospect of direct benefit for the individual subject, or by a monitoring procedure that is likely to contribute to the subject's well-being, only if the IRB finds that—

(a) The risk is justified by the anticipated benefit to the subjects;

(b) The relation of the anticipated benefit to the risk is at least as favorable to the subjects as that presented by available alternative approaches; and

(c) Adequate provisions are made for soliciting the assent of the children and permission of their parents or guardians, as set forth in § 97.408.

(**Authority:** 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b).)

§ 97.406 Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition.

ED conducts or funds research in which the IRB finds that more than minimal risk to children is presented by an intervention or procedure that does not hold out the prospect of direct benefit for the individual subject, or by a monitoring procedure which is not likely to contribute to the well-being of the subject, only if the IRB finds that—

(a) The risk represents a minor increase over minimal risk;

(b) The intervention or procedure presents experiences to subjects that are reasonably commensurate with those inherent in their actual or expected medical, dental, psychological, social, or educational situations;

(c) The intervention or procedure is likely to yield generalizable knowledge about the subjects' disorder or condition that is of vital importance for the understanding or amelioration of the subjects' disorder or condition; and

(d) Adequate provisions are made for soliciting assent of the children and permission of their parents or guardians, as set forth in § 97.408.

(**Authority:** 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b).)

§ 97.407 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children.

ED conducts or funds research that the IRB does not believe meets the requirements of § 97.404, § 97.405, or § 97.406 only if—

(a) The IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; and

(b) The Secretary, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment, has determined either that—

(1) The research in fact satisfies the conditions of § 97.404, § 97.405, or § 97.406, as applicable; or

(2)(i) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children;

(ii) The research will be conducted in accordance with sound ethical principles; and

(iii) Adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth in § 97.408.

(**Authority:** 5 U.S.C. 301; 20 U.S.C. 1221e-3, 3474; and 42 U.S.C. 300v–1(b)).

§ 97.408 Requirements for permission by parents or guardians and for assent by children.

(a) In addition to the determinations required under other applicable sections of this subpart, the IRB shall determine that adequate provisions are made for soliciting the assent of the children, if in the judgment of the IRB the children are capable of providing assent. In determining whether children are capable of assenting, the IRB shall take into account the ages, maturity, and psychological state of the children involved. This judgment may be made for all children to be involved in research under a particular protocol, or for each child, as the IRB deems appropriate. If the IRB determines that the capability of some or all of the children is so limited that they cannot reasonably be consulted or that the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the children and is available only in the context of the research, the assent of the children is not a necessary condition for proceeding with the research. Even if the IRB determines that the subjects are capable of assenting, the IRB may still waive the assent requirement under circumstances in which consent may be waived in accord with § 97.116.

(b) In addition to the determinations required under other applicable sections of this subpart, the IRB shall determine, in accordance with and to the extent that consent is required by § 97.116, that adequate provisions are made for soliciting the permission of each child's parent(s) or guardian(s). If parental permission is to be obtained, the IRB may find that the permission of one parent is sufficient for research to be conducted under § 97.404 or § 97.405. If research is covered by §§ 97.406 and 97.407 and permission is to be obtained from parents, both parents must give their permission unless one parent is deceased, unknown, incompetent, or not reasonably available, or if only one parent has legal responsibility for the care and custody of the child.

(c) In addition to the provisions for waiver contained in § 97.116, if the IRB determines that a research protocol is designed for conditions or for a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects (for example, neglected or abused children), it may waive the consent requirements in subpart A of this part and paragraph (b) of this section, provided an appropriate mechanism for protecting the children who will participate as subjects in the research is substituted, and provided further that the waiver is not inconsistent with Federal, State, or local law. The choice of an appropriate mechanism depends upon the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research subjects, and their age, maturity, status, and condition.

(d) Permission by parents or guardians must be documented in accordance with and to the extent required by § 97.117.

(e) If the IRB determines that assent is required, it shall also determine whether and how assent must be documented.

(**Authority:** 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b).)

§ 97.409 Wards.

(a) Children who are wards of the State or any other agency, institution, or entity may be included in research approved under §§ 97.406 or 97.407 only if that research is—

(1) Related to their status as wards; or

(2) Conducted in schools, camps, hospitals, institutions, or similar settings in which the majority of children involved as subjects are not wards.

(b) If research is approved under paragraph (a) of this section, the IRB shall require appointment of an advocate for each child who is a ward, in addition to any other individual acting on behalf of the child as guardian or in *loco parentis*. One individual may serve as advocate for more than one child. The advocate must be an individual who has the background and experience to act in, and agrees to act in, the best interest of the child for the duration of the child's participation in the research and who is not associated in any way (except in the role as advocate or member of the IRB) with the research, the investigator or investigators, or the guardian organization.

(**Authority:** 5 U.S.C. 301; 20 U.S.C. 1221e-3, 3474; and 42 U.S.C. 300v–1(b).)

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Thursday
May 22, 1997

Part V

Department of Labor

Employment and Training Administration

Department of Education

Office of Vocational and Adult Education

School-to-Work Opportunities Act; Indian Program Development and Implementation Grants; Application Procedures; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

School-to-Work Opportunities Act; Indian Program Development and Implementation Grants; Application Procedures

AGENCIES: Employment and Training Administration, Labor. Office of Vocational and Adult Education, Education.

ACTION: Notice of availability of funds and solicitation for Indian Program Grant Applications (SGA).

SUMMARY: THIS NOTICE CONTAINS ALL OF THE NECESSARY INFORMATION AND FORMS NEEDED TO APPLY FOR GRANT FUNDING. This notice announces competitions for Indian Program Development and Implementation Grants to enable local partnerships to begin development or implementation of School-to-Work Opportunities initiatives that serve Indian youth and involve schools funded by the Bureau of Indian Affairs (BIA). The School-to-Work Opportunities initiatives funded under this competition will offer Indian youth access to School-to-Work Opportunities programs that will prepare them for first jobs in high-skill, high-wage careers and further postsecondary education and training.

DATES: Applications for grant awards will be accepted commencing May 22, 1997. The closing date for receipt of applications is July 21, 1997, at 4 p.m. (Eastern Time) at the address below. Telefacsimile (FAX) applications WILL NOT BE HONORED.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Ms. Laura Cesario, Reference: SGA/DAA 97–016, 200 Constitution Avenue NW, Room S–4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Cesario, Division of Acquisition and Assistance, telephone: (202) 219–7300, ext. 111 (this is not a toll-free number). This solicitation will also be published on the Internet on the Employment and Training Administration's Home Page at http://www/doleta.gov.

Part I: Supplementary Information

Section A. Purpose

The Departments of Education and Labor are reserving funds appropriated for FY96 under the School-to-Work Opportunities Act (the Act) (Public Law 103–239) for a competition for Indian Program Grants authorized under Title II, Subtitle C of the Act. Grants under this competition will be awarded to local partnerships that serve Indian youth and involve Bureau of Indian Affairs (BIA) funded schools. Successful partnerships under this competition must demonstrate the capacity to either develop or implement local School-to-Work Opportunities initiatives serving Indian youth. Approximately $750,000 is available for awards under this notice. The Departments expect to award approximately 4 development grants of about $30,000 each and up to 7 implementation grants ranging in amounts between $75,000 and $100,000 each under this notice. Award decisions will be published on the Internet under the Department's Home Page at http://www/doleta.gov.

Local Partnerships may apply for either a development grant, an implementation grant, or both. The competitions have been structured to allow those partnerships that have been engaged in planning and development activities, including those funded under last year's solicitation, to apply for an implementation grant without jeopardizing their opportunities for receiving a development grant. However, local partnerships who intend to be considered for either a development or implementation grant competitions must submit separate applications for each competition. The amount of any award will be based on a number of factors, including the scope, quality, and comprehensiveness of the proposed initiative as well as the size of the population to be served.

The Departments intend to conduct future competitions for Indian Program Grants, on an annual basis, under the School-to-Work Opportunities Act of 1994. A local partnership may receive only one (1) development or implementation grant under this notice, with grant renewals for up to five years (award plus four option years) to be awarded based on availability of funds and the demonstrated progress of the grantee.

Section B. Application Process

1. Eligible Applicants

The definitions for ''Local Partnership'' and ''Bureau-funded School'' are included in this solicitation due to their critical nature and their overall application in the eligibility determination. All other terms defined in the Act are hereby incorporated and applied to this solicitation.

(A) Local Partnership Definition

An entity that meets the definition of ''local partnership,'' as defined below, proposes to serve Indian youth, and involves Bureau-funded schools, is eligible to apply for an Indian Program Grant for either development or implementation of School-to-Work Opportunities initiatives.

''Local Partnership'' is defined in the Act to mean an entity responsible for School-to-Work Opportunities programs funded under this competition and that—

(a) Consists of tribal organizations responsible for economic development, employment, job training, and education (such as tribal business councils, local chapters of tribal business councils, tribal departments of education), employers (including tribal businesses or school-based enterprises where applicable), representatives of Bureau-funded schools and local postsecondary educational institutions (including representatives of area vocational education schools and tribal colleges where applicable), local educators (such as teachers, counselors, or administrators), representatives of labor organizations or nonmanagerial employee representatives, students and parents; and

(b) May include other entities, such as—

(1) Employer organizations;

(2) Community-based organizations;

(3) National trade associations working at the local level;

(4) Industrial extension centers;

(5) Rehabilitation agencies and organizations;

(6) Registered apprenticeship agencies;

(7) Local vocational education entities;

(8) Proprietary institutions of higher education (as defined in section 481(b) of the Higher Education Act of 1965 (20 U.S.C. 1088(b)) that meet the eligibility and certification requirements under Title IV of such Act (20 U.S.C. 1070 et seq.);

(9) Local government agencies;

(10) Parent organizations;

(11) Teacher organizations;

(12) Vocational student organizations;

(13) Private industry councils established under sections 402 of the Job Training Partnership Act (29 U.S.C. 1512);

(B) Involvement of Bureau of Indian Affairs' (BIA) Funded Schools

In addition to meeting the definition of a ''local partnership'', applicants seeking funding under this notice must demonstrate that any funds awarded under this competition will be used to develop and/or implement initiatives serving Indian youth, and involving schools funded by the Bureau of Indian Affairs.

• Partnerships may demonstrate service to Indian youth and involvement by Bureau-funded schools by demonstrating that their proposed School-to-Work initiatives will provide direct services to students enrolled in Bureau-funded schools.

''Bureau-funded school'' as defined in Section 1139 (3) of the ''Education Amendments of 1978'' means:

(a) A Bureau school—a Bureau of Indian Affairs-operated elementary or secondary day or boarding school or a BIA-operated dormitory for students attending a school other than a Bureau school.

(b) A contract school—an elementary or secondary school or a dormitory that receives financial assistance for its operation under a contract or agreement with the BIA under Section 102, 103(a), or 208 of the Indian Self-Determination and Education Assistance Act.

(c) A school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

• However, the Departments recognize that there are several geographic areas throughout the country which contain high concentrations of Indian youth that are not served by the school systems supported by the Bureau of Indian Affairs. Partnerships that include non-Bureau-funded schools serving Indian youth may be eligible to apply for funding under certain circumstances. For example, involvement by a Bureau-funded school in a partnership may consist of a single Bureau-funded school being included within a partnership while other non-Bureau-funded schools serving Indian youth participate in those partnerships as well. Therefore, a partnership may be eligible to apply for funding even where included in the partnership are one or more non-Bureau-funded schools and the involvement of Bureau-funded schools consists of a collaborative, consultative, or close advisory relationship. In such a case, services are not necessarily provided directly to the Bureau-funded school's students, but there remains a measurable benefit to both the partnership and the Bureau-funded school or schools. Thus, a partnership meeting all other eligibility requirements, including that of serving Indian youth, but located in a geographical area or State in which there are few, if any, Bureau-funded schools, may nonetheless be eligible for funding under this solicitation.

Applicants must provide convincing evidence that strategies devised and initiatives mounted will, in fact, meet the intent of establishing the collaborative, consultative or close advisory relationship which results in measurable benefits to the Bureau-funded school as stipulated by the Departments. Applicants establishing collaborative, consultative or advisory relationships with Bureau-funded school(s) within their partnerships are advised to develop mutually beneficial initiatives, activities and endeavors which are consistent with the parameters discussed in Title II of the Act and further illustrated in Part II, Section C of this solicitation.

In accordance with section 221 of the Act, only those applicants that provide sufficient information determining their eligibility against the criteria as stated above will be considered for funding under this solicitation. The Departments intend to pre-screen all applications against the aforementioned eligibility criteria prior to the panelists' review and will not consider any applications that do not contain the required assurances and determining information. Applicants will not have the opportunity to submit additional or revised information should a determination be made that the partnership does not meet the eligibility criteria.

Entities described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this SGA. The Lobbying Disclosure Act of 1995, Public Law No. 104–65,109 stat.691, that became effective January 1, 1996, prohibits the award of federal funds to these entities if they engage in lobbying activities.

2. Submission of Application

Applicants must submit an original and three (3) copies of the application. The application shall consist of five distinct parts: (I) detachable description addressing the eligibility criteria, (II) budget, (III) abstract, (IV) program narrative, and (V) appendices. To ensure a comprehensive and expedient review, applicants must submit an application formatted as seen below:

Table of Contents

I. Eligibility Requirements

Part I must contain detailed information as described in Part I, Section B(1) of this notice and, for prescreening purposes, should be separate and easily detachable from the remainder of the application.

II. Budget

Part II shall contain the Standard Form (SF) 424, ''Application for Federal Assistance,'' (Appendix A) and SF 424A, ''Budget'' (Appendix B). All copies of the 424 Form must have original signatures of the designated fiscal agent and must indicate in item 11 whether the application is to be considered for development or implementation funding. Applicants shall indicate on the SF–424 the organization's IRS status, if applicable. The Catalog of Federal Domestic Assistance number is 17.249. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on Budget Form 424A. Further, the Departments recommend that applicants break out line item costs illustrating those items charged under the administrative costs cap discussed in Part III of this notice.

III. Abstract

Part III shall consist of a one-page abstract summarizing the essential components and key features of the partnership's plan.

IV. Program Narrative

Part IV shall contain the program narrative that demonstrates the applicant's plan and capabilities in accordance with the evaluation criteria contained in this notice. Applicants must describe their plan in light of each of the Evaluation Criteria in Part III, Section B of this notice. No cost data or reference to price shall be included in this part of the application. Applicants must limit the program narrative section to no more than 40 double-spaced pages, on one side only. Applications that fail to meet the page limitation requirement will not be considered.

V. Appendices

All applicable appendices including letters of support, resumes and organizational charts should be included in this section. The safeguard assurance, as required under Part II, Section D, ''Safeguards'', of this notice, should be included in all applications as Appendix A. The Departments recommend that all appendix entries be cross-referenced back to applicable sections in the program narrative.

Applicants must limit the appendices to no more than 20 pages. Applications that fail to meet the page limitation requirement will not be considered.

3. Late Applications

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—

(a) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or

(b) Was sent by the U.S. Postal Service Express Mail Next Day Service to addressee not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term ''working days'' excludes weekends and Federal holidays.

The term ''post marked'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

4. Hand-Delivered Applications

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:00 P.M., Eastern Time, on the closing date. TELEGRAPHED AND/OR FAXED APPLICATIONS WILL NOT BE HONORED. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and MUST BE RECEIVED by the above specified date and time.

5. Period of Performance

The period of performance will be twelve (12) months from the date of award by the Department of Labor. Since all awards must be made by September 30, 1997 under this competition, the Departments recommend that all applicants use September 30, 1997–October 31, 1998 as both budgetary and project award periods.

6. Option to Extend

These Indian Program Grants may be extended for up to four additional years at the discretion of the Federal Government, based upon the availability of funds and the demonstrated progress of the grantee under this School-to-Work Opportunities initiative. While the Departments encourage grantees funded for developmental initiatives during last year's competition to apply for Implementation funding, it remains the Departments' desire to continue the developmental investment until a partnership is ready to successfully compete and receive Implementation funding under this initiative.

Consistent with the School-to-Work Opportunities Act, the Departments expect that over time, Federal funds, added to this grant, will decrease. Funds awarded under this notice are considered ''venture capital'' for the establishment of School-to-Work Opportunities systems serving Indian youth. Likewise, local partnerships will eventually assume responsibility for maintaining School-to-Work Opportunities systems with other Federal, State and local resources.

7. Reporting Requirements/Deliverables

If awarded a grant, the local partnership will be required to provide the following:

1. Quarterly and Final Reports

- Quarterly financial reports as required by the grant award documents;
- Quarterly narrative reports on progress made and problems encountered in accomplishing the proposed plan and that indicate, where relevant, the corrective action(s) proposed to address developmental or implementation problems; and
- Annual reports at year-end on the activities and accomplishments of the local partnership's School-to-Work Opportunities initiative.

2. Deliverables

- At a minimum, preparing an assessment of accomplishments and results at each program year-end suitable for dissemination to other Indian communities and partnerships.
- Acting as a host to outside visitors from other Indian communities or local partnerships interested in developing and implementing School-to-Work Opportunities initiatives in settings with similar characteristics.

Part II. Program Description

Section A. Background

The United States is the only industrialized nation that lacks a comprehensive and coherent system to help its youth acquire the knowledge, skills, abilities, and information about the labor market necessary to make an effective transition from school to career-oriented work. Three-fourths of America's high school students do not attain four-year college degrees. Many of them do not possess the basic academic and occupational skills necessary for entry into high-skill, high-wage careers in the changing workplace or to pursue further education. The School-to-Work Opportunities Act of 1994 created a national framework for high-quality, statewide school-to-work transition systems that enable young Americans to identify and navigate paths to productive and progressively more rewarding roles in the workplace.

Partnerships serving Indian youth face particular challenges in implementing School-to-Work Opportunities initiatives:

1. High unemployment and relatively few high-skill, high-wage employment opportunities often characterize the areas to be served, making it more difficult to secure employer participation, work-based learning opportunities, and career-track jobs for Indian youth who complete a School-to-Work Opportunities program. Therefore, creative strategies must be developed to make full use of the capacity of local institutions to include a variety of alternative work-based learning environments (ie. tribal businesses, school-based enterprises and entrepreneurial training) and to support intensive efforts to enhance diverse employer involvement. Partnerships should strive to engage employers by offering them a range of opportunities for participating in the design and implementation of School-to-Work Opportunities systems, including membership on councils and partnerships; assistance in setting standards, designing curriculum and determining outcomes; providing worksite experience for teachers; helping to recruit other employers; and providing worksite experience for students, such as mentoring, job shadowing, unpaid work experiences, supported work experiences, and paid work experiences.

2. High dropout rates, unequal access to quality educational experiences and the lack of relevant information regarding career options often plague such high challenge, remote service areas. School-to-Work Opportunities initiatives can offer alternative learning environments, creative approaches to academic and technical subjects and relevant and engaging school-based and work-based activities that can encourage

Indian youth to remain in school until completion. To achieve such objectives, School-to-Work systems need to engage youth as early as possible. Career awareness and exploration activities allow Indian youth exposure to a range of high-skill, high-wage careers, the level of skills and abilities necessary in such occupations, and insight into the relevance of classroom education and the overall value of learning. Further, professional development and stakeholder education remains a critical piece towards the building of School-to-Work systems. In-service training programs and outreach initiatives are essential towards developing relevant and engaging curriculum, teaching methodologies and assessments which let students make the critical connections between the classroom environment and the world of work.

3. Economic and geographic factors may create uneven educational and employment opportunities among Indian youth, thus requiring that careful consideration be given to enhancing both the access and availability of opportunities. Therefore, partnerships are encouraged to link School-to-Work initiatives with existing educational reform strategies, workforce development initiatives and economic development plans. By doing so, partnerships will initiate School-to-Work systems capable of equipping tribal youth with the skills and abilities to take high-skill, high-wage positions within tribal government, targeted tribal industries, or outside of the tribe in the larger labor market. Further, communities with highly skilled, highly trained youth will aid the success of tribal economic development initiatives through the encouragement of entrepreneurial ventures and the recruitment of targeted industries and employers interested in developmental ventures on tribal lands.

Under this competition, federal funds will be used as ''venture capital'' to establish School-to-Work Opportunities systems serving Indian youth. Local partnerships applying for development grants should be ready to use funds to involve Bureau-funded schools in establishing cooperative linkages and planning innovative methods of providing School-to-Work services for Indian youth. Local partnerships applying for implementation grants should be ready to implement School-to-Work initiatives involving Bureau-funded schools by building on and enriching existing promising programs such as tech-prep education, career academies, youth apprenticeship, school-based enterprises, job training and previous related efforts funded by the BIA. However, the purpose of funding under the School-to-Work Opportunities initiative is not simply to augment existing programs, but rather to build systems that provide opportunities for all students to achieve the benefits and outcomes of the School-to-Work Opportunities initiative. Building comprehensive systems will likely involve a combination of enhancing existing programs, establishing linkages among them, and developing an effective framework that connects both existing and new programs in a meaningful way. Through involvement in the School-to-Work Indian Program Grants, tribal organizations are expected to build over time the kind of School-to-Work Opportunities Systems that best meet their needs.

Section B. Objectives

The School-to-Work Opportunities initiative provides for a substantial degree of State and local flexibility and experimentation, but all State systems, individual local initiatives and Indian Program initiatives will share several common features and basic program components as required by the School-to-Work Opportunities Act of 1994. A School-to-Work Opportunities initiative under this competition must include the following common features and basic program components:

1. The basis of the School-to-Work Opportunities system is—

(a) The integration of school-based learning and work-based learning;

(b) The integration of academic and occupational learning; and

(c) The establishment of effective linkages between secondary and postsecondary education.

2. School-to-Work Opportunities systems will—

(a) Provide participating students with the opportunity to complete career majors;

(b) Incorporate the system components described below (school-based learning, work-based learning, and connecting activities);

(c) Provide participating students, to the extent practicable, with strong experience in and understanding of all aspects of the industry the students are preparing to enter; and

(d) Provide all students with equal access to the full range of such system components (including both school-based and work-based learning components) and related activities, such as recruitment, enrollment, and placement activities, except that nothing in this notice shall be construed to provide any individual with an entitlement to services.

3. School-to-Work Opportunities initiatives must incorporate three basic program components:

(a) School-Based Learning, that includes—

- Career awareness and career exploration and counseling (beginning at the earliest possible age, but not later than the 7th grade) in order to help students and school dropouts who may be interested to identify, and select or reconsider, their interests, goals, and career majors, including those options that may not be traditional for their gender, race, or ethnicity;
- Initial selection by interested students and school dropouts of a career major not later than the beginning of the 11th grade;
- A program of study designed to meet the same academic content standards established for all students, including, where applicable, standards established under the Goals 2000: Educate America Act, and to meet the requirements necessary to prepare a student and school dropouts for postsecondary education and the requirements necessary to earn a skill certificate;
- A program of instruction and curriculum that integrates academic and vocational learning (including applied methodologies and team-teaching strategies), and incorporates instruction, to the extent practicable, in all aspects of an industry, appropriately tied to the career of a participant;
- Regularly scheduled evaluations involving ongoing consultation and problem solving with students and school dropouts to identify their academic strengths and weaknesses, academic progress, workplace knowledge, goals, and the need for additional learning opportunities to master core academic and vocational skills; and
- Procedures to facilitate the entry of students and school dropouts participating in a School-to-Work Opportunities initiative into additional training or postsecondary education programs, as well as to facilitate the transfer of the students and school dropouts between education and training programs.

(b) Work-based learning, that includes—

(1) Mandatory activities—

- Work experience;
- A planned program of job training and work experiences (including training related to pre-employment and employment skills to be mastered at progressively higher levels) that are coordinated with learning in the school-based learning component described above and are relevant to the career

majors of students and school dropouts lead to the award of skill certificates;

• Workplace mentoring;

• Instruction in general workplace competencies, including instruction and activities related to developing positive work attitudes, and employability and participative skills; and

• Broad instruction, to the extent practicable, in all aspects of the industry.

(2) Permissible activities—Such component may include such activities as paid work experience, job shadowing, school-sponsored enterprises, or on-the-job training.

(c) Connecting Activities, that include—

• Matching students and school dropouts with the work-based learning opportunities of employers;

• Providing, with respect to each student and school dropout, a school site mentor to act as a liaison among the student and the employer, school, teacher, school administrator, and parent of the student, and, if appropriate, other community partners;

• Providing technical assistance and services to employers, including small- and medium-sized businesses, and other parties in—

(A) Designing school-based learning components as described above, work-based learning components as described above, and counseling and case management services; and

(B) Training teachers, workplace mentors, school site mentors, and counselors;

• Providing assistance to schools and employers to integrate school-based and work-based learning and integrate academic and occupational learning into the program;

• Encouraging the active participation of employers, in cooperation with local education officials, in the implementation of local activities described in this Part as school-based learning, work-based learning, or connecting activities;

(A) Providing assistance to participants who have completed the program in finding an appropriate job, continuing their education, or entering into an additional training program; or

(B) Linking the participants with other community services that may be necessary to assure a successful transition from school to work;

• Collecting and analyzing information regarding post-program outcomes of participants in the School-to-Work Opportunities initiative, to the extent practicable and appropriate for Indian programs, on the basis of socioeconomic status, gender, and disability, and on the basis of whether the participants are students with limited-English proficiency, school dropouts, disadvantaged students, or academically talented students; and

• Linking youth development activities under the School-to-Work Opportunities initiative with employer and industry strategies for upgrading the skills of their workers.

Section C. Examples of Allowable Activities

Funds awarded under this competition to a partnership serving Indian youth and involving Bureau-funded schools may be used only for activities undertaken to develop or implement the local partnership's plan that will provide opportunities for Indian youth to participate successfully in a School-to-Work Opportunities initiative.

1. Development Grants

Eligible partnerships that have not fully developed a plan for the implementation of a School-to-Work Opportunities system may apply for development grants. These funds may support a wide range of planning and development activities. These grants are designed for situations in which an eligible partnership may not be ready to move forward with implementation of a School-to-Work Opportunities initiative, but intends to compete for implementation grants in future rounds of competition. Eligible partnerships seeking development grants must describe the planning and development activities for the School-to-Work Opportunities initiative that the partnership proposes to undertake during the 12-month grant period. The plan should include activities funded from this grant as well as from other sources. Examples of development activities that may be conducted with funds awarded under an Indian Program Grant are similar to those stipulated under section 205 of the Act and as illustrated below—

1. Initiating a planning process aimed at building a School-to-Work Opportunities initiative;

2. Identifying or establishing an appropriate structure to administer a School-to-Work Opportunities initiative;

3. Further expanding eligible partnerships as defined in this notice to participate in the design, development and administration of the School-to-Work Opportunities initiative;

4. Building consensus among local stakeholders and supporting planning and development activities to provide guidance in creating the School-to-Work Opportunities plan;

5. Initiating pilot projects to test key components of program design such as designing and testing common intake systems for students participating in School-to-Work Opportunities initiatives, and determining methods to integrate program data bases;

6. Analyzing current statutory, regulatory and administrative impediments to the creation of a School-to-Work Opportunities initiative;

7. Assessing staff training and development needs for participation in a School-to-Work Opportunities initiative;

8. Preparing the strategic plan required for submission of a proposal for an implementation grant. The plan should describe the progress expected to be achieved in the planning and development process by the end of the 12-month grant period. This should include expected ''next steps.''

2. Implementation Grants

Eligible partnerships that have developed and are ready to implement a plan for a School-to-Work Opportunities initiative may apply for implementation grants. These funds may be used to support a wide range of activities providing School-to-Work Opportunities for Indian youth. Examples of implementation activities that may be conducted with funds awarded under an Indian Program Grant are similar to those stipulated in section 215 of the Act and as illustrated below:

1. Recruiting and providing assistance to employers, including small- and medium-sized businesses, tribal businesses and school-based enterprises, to provide the work-based learning components in the School-to-Work Opportunities initiative;

2. Establishing consortia of employers, including tribal businesses and school-based enterprises, to support the School-to-Work Opportunities initiative and provide access to jobs related to the career majors of students;

3. Supporting or establishing intermediaries (selected from among the members of the local partnership) to perform the connecting activities described above in Part II. B., ''Objectives,'' and to provide assistance to Indian youth in obtaining jobs and further education and training;

4. Designing or adapting innovative school curricula that can be used to integrate academic, vocational, and occupational learning, school-based and work-based learning, and secondary and postsecondary education for all students in the area served;

5. Providing training to work-based and school-based staff on new curricula, student assessments, student guidance,

and feedback to the school regarding student performance in connection with the School-to-Work Opportunities Initiative;

6. Establishing, in schools participating in a School-to-Work Opportunities initiative, a graduation assistance program to assist at-risk students, low-achieving students, and students with disabilities, in graduating from high school, enrolling in postsecondary education or training, and finding or advancing in jobs;

7. Providing career exploration and awareness services, counseling and mentoring services, college awareness and preparation services, and other services (beginning at the earliest possible age, but not later than the 7th grade) to prepare students for the transition from school to work;

8. Providing supplementary and support services, including child care and transportation, when such services are necessary for participation in a local School-to-Work Opportunities initiative;

9. Conducting or obtaining an in-depth analysis of the local labor market and the generic and specific skill needs of employers to identify high-demand, high-wage careers to target;

10. Integrating school-based and work-based learning into existing job training programs for school dropouts;

11. Establishing or expanding school-to-apprenticeship programs in cooperation with registered apprenticeship agencies and apprenticeship sponsors;

12. Assisting participating employers, including small- and medium-sized businesses, tribal businesses and school-based enterprises, to identify and train workplace mentors and to develop work-based learning components;

13. Promoting the formation of partnerships between Bureau-funded schools and other elementary and secondary schools (including middle schools) and local businesses as an investment in future workplace productivity and competitiveness;

14. Designing local strategies to provide adequate planning time and staff development activities for teachers, school counselors, related services personnel, and school site mentors, including opportunities outside the classroom that are at the worksite;

15. Enhancing linkages between after-school, weekend, and summer jobs, career exploration, and school-based learning;

16. Obtaining the assistance of organizations and institutions that have a history of success in working with school dropouts and at-risk and disadvantaged youths in recruiting such Indian youth who are at-risk or school dropouts to participate in a local School-to-Work Opportunities initiative;

17. Conducting outreach to all students in a language and manner that most appropriately and effectively meets their needs and responds to the needs of their community;

18. Experimenting with providing work-based learning opportunities both inside and outside the Indian community;

19. Developing, in conjunction with Title I of the Elementary and Secondary Schools Act or other funds, improvements in the Bureau-funded and other elementary and middle schools that serve the Indian community in order to reduce the long-term dropout rate of Indian youth;

20. Developing and implementing techniques that will increase the college enrollment of Indian youth in the targeted area;

21. Utilizing complementary initiatives within the targeted area such as comprehensive sports and recreation programs, after-school programs, and community development activities;

22. Encouraging Indian youth to design and initiate innovative work-based learning activities operated within a school setting; and

23. Developing and implementing school-based and work-based learning and connecting activities that are related to the tribal organization's economic development plan.

Section D. Safeguards

The Departments apply the following safeguards to School-to-Work Opportunities programs funded under this competition:

1. No student in a School-to-Work Opportunities system shall displace any currently employed worker (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits).

2. No School-to-Work Opportunities program shall impair existing contracts for services or collective bargaining agreements, and no program under this competition that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.

3. No student participating in a School-to-Work Opportunities program shall be employed or fill a job—

a. When any other individual is on temporary layoff, with the clear possibility of recall, from the same or any substantially equivalent job with the participating employer; or

b. When the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created with a student.

4. Students shall be provided with adequate and safe equipment and safe and healthful workplaces in conformity with all health and safety requirements of Federal, State, and local law.

5. Nothing in this notice shall be construed so as to modify or affect any Federal or State law prohibiting discrimination on the basis of religion, gender, age, or disability.

6. Funds awarded under this competition shall not be expended for wages of students or workplace mentors participating in any part of a School-to-Work Opportunities system.

7. The grantee shall implement and maintain such other safeguards as the Departments may deem appropriate in order to ensure that School-to-Work Opportunities participants are afforded adequate supervision by skilled adult workers, or to otherwise further the purposes of school-to-work.

An applicant must provide an assurance, as appendix A, that the foregoing safeguards will be implemented and maintained throughout the school-to-work system.

Section E. Waivers

Under Title V of the Act, the Secretaries may waive certain Federal requirements that impede the ability of a State or local partnership to carry out the purposes of the Act. Only local partnerships in States with approved School-to-Work Opportunities plans may apply for waivers. A local partnership that seeks a waiver should contact its State School-to-Work Contact to determine what documentation is required and to whom it should be sent. In May, 1995, the National School-to-Work Opportunities Office issued a document entitled ''School-to-Work Opportunities Waiver and Plan Approval Process Questions and Answers.'' This document contains answers to many of the questions that localities may have when preparing their waiver requests. Local Partnerships interested in applying for waivers should contact the National School-to-Work Opportunities Office or their State School-to-Work Contact for a copy of the waiver document.

Part III. Indian Program Grants Competition Requirements

Section A. Administrative Cost Cap

The Departments are applying the 10 percent cap on administrative costs contained in section 215(b)(6) of the Act to local partnerships receiving implementation grants directly under this competition. Section 215(b)(6) of

the Act applies the 10 percent administrative cap to subgrants received by local partnerships from a State. The Departments have concluded that applying the 10 percent cap to local partnerships under this competition is consistent with the Act's intent and its broader limitations on administrative costs.

Definition

All definitions in the Act apply to local School-to-Work Opportunities systems funded under this and future Indian Program Grant competitions. Since the Act does not contain a definition of the term ''administrative costs'' as used in section 217 of the Act, the Departments will apply the following definition to this and future competitions for Indian Program Grants.

The term ''administrative costs'' means the activities of a local partnership that are necessary for the proper and efficient performance of its duties under the Indian Program Grant pursuant to the School-to-Work Opportunities Act and that are not directly related to the provision of services to participants or otherwise allocable to the program's allowable activities listed in Title II of the Act. Administrative costs may be either personnel or non-personnel costs, and may be either direct or indirect. Costs of administration include those costs that are related to this grant in such categories as—

A. Costs of salaries, wages, and related costs of the grantee's staff engaged in—

- Overall system management, system coordination, and general administrative functions;
- Preparing program plans, budgets, and schedules, as well as applicable amendments;
- Monitoring of local initiatives, pilot projects, subrecipients, and related systems and processes;
- Procurement activities, including the award of specific subgrants, contracts, and purchase orders;
- Developing systems and procedures, including management information systems, for ensuring compliance with the requirements under the Act;
- Preparing reports and other documents related to the Act;
- Coordinating the resolution of audit findings;

B. Costs for goods and services required for administration of the School-to-Work Opportunities system;

C. Costs of system-wide management functions; and

D. Travel costs incurred for official business in carrying out grants management or administrative activities.

Section B. Evaluation Criteria

Under the School-to-Work Opportunities Indian Program Grants competition announced in this notice, a careful evaluation of applications will be made by technical review panel(s). Each panelist will evaluate the applications against the criteria listed below. The government may elect to award grant(s) without discussions with the offerer(s). In such situations, an award based on the offerer's signature on the SF–424 constitutes a binding offer.

Evaluation Criteria: Development Grants

The Government will use the following evaluation criteria and associated point values in evaluating applications for *development grants:*

Evaluation Criterion 1: Vision of a local School-to-Work Opportunities initiative incorporating the elements described in Part II of this notice.

Points: 30.

Considerations: In applying this criterion, reviewers will consider:

1. How well does the vision of an integrated delivery system for School-to-Work Opportunities incorporate the common features and basic system components described in Part II of this notice?

2. How clearly are the problems and/or inefficiencies of current programs and approaches understood and articulated?

3. How clearly does the partnership articulate how it envisions integrating promising existing programs into a comprehensive School-to-Work Opportunities system?

4. How well does this vision incorporate realistic strategies to ensure that ''all students'' have opportunities to participate in School-to-Work initiatives?

5. How well does the vision address the needs of the tribal economic development plan and the local labor market within which the targeted area is located?

6. How well does the vision convey the partnership's connection between the proposed School-to-Work Opportunities system and overall education reform?

Evaluation Criterion 2: Approach to collaboration, planning and development.

Points: 30.

Considerations: In applying this criterion, reviewers will consider:

1. Does the eligible partnership include all of the required representatives as defined in Part I, section B.1 of this notice?

2. Whether other appropriate officials and organizations necessary to achieve the objectives of the application are also represented.

3. To what extent will employers and representatives of workers participate in the development of the plan?

4. Are the roles and responsibilities of each partner well articulated and substantive?

5. Is the plan likely to lead to a broad consensus about the design of the School-to-Work Opportunities system?

6. Is the proposal clear on who will have the day-to-day responsibilities for the grant and how major decisions will be made?

Evaluation Criterion 3: Feasibility and soundness of the development plan.

Points: 25.

Considerations: In applying this criterion, reviewers will consider:

1. Are the planned activities likely to prepare the eligible partnership to implement a School-to-Work Opportunities initiative?

2. To what extent has progress already been made?

3. Are staff development and training needs fully considered?

4. To what extent has the partnership envisioned pilot testing of key components toward the establishment of a comprehensive framework for implementation?

5. Does the development process fully take advantage of technology?

6. Whether the approach to identifying and overcoming anticipated barriers to the development of the partnership's School-to-Work plan is feasible.

7. Whether the management plan and related timeline of activities included in the application are appropriate to the goals and outcomes to be achieved.

8. Are key personnel to be used on the project qualified to undertake proposed activities?

Evaluation Criterion 4: Commitment to the planning and development effort.

Points: 15.

Considerations: In applying this criterion, reviewers will consider:

1. To what extent are Federal or other local resources being utilized to finance planning and development activities towards the development of a comprehensive School-to-Work system?

2. To what extent will the partnership provide in-kind support and resources towards the development of the system?

3. Whether resources available are adequate to support the activities proposed.

Evaluation Criteria: Implementation Grants

The Government will use the following evaluation criteria and associated point values in evaluating applications for *implementation grants.*

Evaluation Criterion 1: Comprehensive Local School-to-Work Opportunities System.

Points: 40.

Considerations: In applying this criterion, reviewers will consider:

A. 20 Points—The extent to which the partnership has designed a comprehensive local School-to-Work Opportunities plan that—

1. Includes effective strategies serving Indian youth and involving Bureau-funded schools that integrates school-based and work-based learning, integrates academic and vocational education, and establishes linkages between secondary and postsecondary education;

2. Is likely to produce systemic change that will have substantial impact on the preparation of all tribal area students for a first job in a high-skill, high-wage career and in increasing their opportunities for further learning;

3. Ensures that all tribal youth will have a full range of options, including options for higher education, additional training and employment in high-skill, high-wage jobs;

4. Ensures coordination and integration with existing school-to-work systems, and with related programs financed from State and private sources, with funds available from Federal education and training programs(such as the Job Training Partnership Act and the Carl D. Perkins Vocational and Applied Technology Education Act); and where applicable, communities designated as Empowerment Zones or Enterprise Communities (EZ/EC);

5. Serves a geographic area that reflects the needs of the local labor market and targets occupational clusters that represent growing industries in the partnership's geographic area and specified in the tribal economic development plan.

6. Includes an effective strategy for assessing and addressing the academic and human service needs of students and dropouts within the tribal community, making improvements or adjustments as necessary, with particular emphasis on the coordination of various human services provided within the tribal community.

B. 20 Points—The extent to which the partnership's plan demonstrates its capability to achieve the statutory requirements and to effectively put in place the system components in Title I of the School-to-Work Opportunities Act, including—

1. A work-based learning component that includes the statutory ''mandatory activities'' and that contributes to the transformation of workplaces into active learning components of the education system through an array of sequentially enriching permissible learning activities such as job shadowing, school-sponsored enterprises, entrepreneurial initiatives, and paid work experiences.

2. A school-based learning component that provides students with high-level academic and technical skills consistent with academic standards that the State or Bureau establishes for all students, including, where applicable, standards established under the Goals 2000 Educate America Act;

3. A connecting activities component to provide a functional link between students' school and work activities, and between workplace partners, educators, community organizations, and other appropriate entities;

4. Effective processes for assessing skills and knowledge required in career majors, and issuing portable skill certificates that are benchmarked to high-quality standards such as those States will establish under the Goals 2000: Educate America Act, and for periodically assessing and collecting information on student outcomes, as well as a realistic strategy and timetable for implementing the process;

5. A flexible School-to-Work Opportunities system that allows students participating in the local system to develop new career goals over time, and to change career majors and;

6. Effective strategies for: providing staff development for teachers, worksite mentors and other key personnel; developing model curricula and innovative instructional methodologies, including processes for infusing culturally sensitive issues, values and beliefs, expanding career and academic counseling in elementary and secondary schools; and utilizing innovative technology-based instructional techniques.

Evaluation Criterion 2: Quality and Effectiveness of the Local Partnership.

Points: 25.

Considerations: In applying this criterion, reviewers will consider—

1. Whether the partnership's plan demonstrates an effective and convincing strategy for continuing the commitment of required partners and other interested parties in the local School-to-Work Opportunities system. As defined in this solicitation, partners must include tribal organizations (such as tribal business councils or local chapters of tribal business councils, tribal departments of education), employers (both within and surrounding the targeted area where applicable and including tribal businesses and school-based enterprises), representatives of Bureau of Indian Affairs' funded schools, local educational agencies and local postsecondary educational institutions (including representatives of area vocational education schools and tribal colleges, where applicable), local educators(such as teachers, counselors, or administrators), representatives of labor organizations or nonmanagerial employee representatives, parents, and students;

2. Whether the partnership's plan demonstrates an effective and convincing strategy for continuing the commitment of workplace partners and other interested parties such as community based organizations and others experienced and focused on dealing with the distinctive needs of Indian youth in the local School-to-Work Opportunities system;

3. The effectiveness of the partnership's plan to include private sector representatives and tribal business leaders as joint partners with tribal educators in both the design and implementation of the local School-to-Work Opportunities system;

4. The extent to which the local partnership has developed strategies to provide a range of opportunities for workplace partners to participate in the design and implementation of the local School-to-Work Opportunities system, including membership on councils and partnerships; assistance in setting standards, designing curricula, and determining outcomes; providing worksite experiences for teachers; helping to recruit other employers; and providing worksite learning activities for students such as mentoring, job shadowing, unpaid work experiences, and paid work experiences;

5. The extent to which the roles and responsibilities of the key parties and any other relevant stakeholders are clearly defined and are likely to produce the desired changes in the way students are prepared for the future;

6. The extent to which the partnership demonstrates the capacity to build a quality local School-to-Work Opportunities system; and

7. Whether the partnership has included methods for sustaining and expanding the partnership, as implementation expands in scope and size.

Evaluation Criterion 3: Participation of All Students.

Points: 20.

Considerations: In applying this criterion, reviewers will refer to the definition of the term ''all students'' as applicable in Title I, section 4(2) of the Act, and consider—

1. The extent to which the partnership will implement effective strategies and systems to provide all students with equal access to the full range of components specified in sections 102 through 104 of the Act and related activities such as recruitment, enrollment, and placement activities, and to ensure that all tribal youth have opportunities to participate in School-to-Work Opportunities components;

2. Whether the partnership has identified potential barriers to the participation of any students, and the degree to which it proposes effective ways of overcoming these barriers;

3. The degree to which the partnership has developed realistic goals and methods for assisting young women to participate in School-to-Work Opportunities components leading to employment in high-performance, high-paying jobs, including non-traditional jobs;

4. The partnership's methods for ensuring safe and healthy work environments for students, including strategies for encouraging tribal schools to provide students with general awareness training in occupational safety and health as part of the school-based learning component, and for encouraging workplace partners to provide risk-specific training as part of the work-based learning component, as well as the extent to which the partnership has developed realistic goals to ensure environments free from racial and sexual harassment; and

5. The extent to which the partnership's plan provides for the participation of a significant number or percentage of Indian youth within the system, including Indian youth located in particularly remote areas in School-to-Work Opportunities activities listed under Title I of the Act.

Evaluation Criterion 4: Management plan.

Points: 15.

Considerations: In applying this criterion, reviewers will consider—

1. The feasibility and effectiveness of the partnership's strategy for using other resources, including private sector or Tribal resources, to maintain the system when Federal resources under the School-to-Work Opportunities Act are no longer available;

2. The extent to which the partnership's management plan anticipates barriers to implementation and proposes effective methods for addressing barriers as they arise;

3. Whether the plan includes feasible, measurable goals for the School-to-Work Opportunities system, based on performance outcomes established under section 402 of the Act, and an effective method for collecting information relevant to the local partnership's progress in meeting its goals;

4. Whether the plan includes a regularly scheduled process for improving or redesigning the School-to-Work Opportunities system based on performance outcomes established under section 402 of the Act;

5. The extent to which the resources requested will be used to develop information, products, and ideas that will assist other local partnerships as they design and implement local systems; and

6. The extent to which the partnership will limit equipment and other purchases in order to maximize the amounts spent on delivery of services to students.

7. Are key personnel under the plan qualified to perform the required activities, including maintaining the essential partnership?

The panel results are advisory in nature and not binding on the Grants Officer. Final funding decisions will consider such factors as: geographic balance, diversity of programmatic approaches, replicability, sustainability, and innovation.

Signed at Washington D.C., this 16th day of May 1997.

Patricia W. McNeil,

Assistant Secretary for Vocational and Adult Education, Department of Education.

Raymond J. Uhalde,

Acting Assistant Secretary for Employment and Training, Department of Labor.

Appendices

Appendix A: Application for Federal Assistance, SF Form 424 Appendix B: Budget Form, SF 424 (a)

BILLING CODE 4510–30–P

Appendix A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:
Application ☐ Construction ☐ Non-Construction
Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, State and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):
☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:
☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits(Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)	$		
9. Indirect Cost(Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	$		

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution	$		
3. TOTAL Cost Sharing / Match (Rate %)	$		

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 97–13415 Filed 5–21–97; 8:45 am]
BILLING CODE 4510–30–C

federal register

Thursday
May 22, 1997

Part VI

Department of Labor

Employment Standards Administration; Wage and Hour Division

29 CFR Part 9

Executive Order 12933 of October 20, 1994—Nondisplacement of Qualified Workers Under Certain Contracts; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

29 CFR Part 9

RIN 1215–AA95

Executive Order 12933 of October 20, 1994—''Nondisplacement of Qualified Workers Under Certain Contracts''

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the text of final regulations to implement Executive Order 12933, ''Nondisplacement of Qualified Workers Under Certain Contracts'' (59 FR 53560, October 24, 1994). The Executive Order requires that workers on a building service contract for a public building be given the right of first refusal for employment with a successor contractor, if they would otherwise lose their jobs as a result of the termination of the contract. The final rules contain a contract clause that must be incorporated into each covered contract, implementing regulations, and enforcement procedures.

DATES: These rules are effective on July 21, 1997.

FOR FURTHER INFORMATION CONTACT: Ethel P. Miller, Government Contracts Team, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3018, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 219–7541. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The reporting and recordkeeping requirements contained in §§ 9.6(c), 9.9(b) and 9.11 of this rule were submitted to and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 and assigned OMB Control No. 1215–0190.

The reporting requirements of §§ 9.6(c) and 9.11 are already required by the McNamara-O'Hara Service Contract Act regulations, 29 CFR 4.6(l)(2), assigned OMB Control No. 1215–0150, and impose no additional burdens.

No comments were received from the public regarding this burden or these regulatory provisions.

No material change has been made in this final rule which affect the reporting or recordkeeping requirements and estimated burdens previously submitted to OMB and discussed in the proposed rule.

II. Background

Executive Order 12933 was signed October 20, 1994, by President Clinton, and published in the **Federal Register** on October 24, 1994 (59 FR 53560). The purpose and need for the Executive Order are clearly stated in the Executive Order itself:

> When a service contract for the maintenance of a public building expires and a follow-on contract is awarded for the same service, the successor contractor typically hires the majority of the predecessor's employees. On occasion, however, a follow-on contractor will hire a new work force, and the predecessor's employees are displaced.
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> As a buyer and participant in the marketplace, the Government is concerned about hardships to individuals that may result from the operation of our procurement system.
>
> Furthermore, the Government's procurement interests in economy and efficiency benefit from the fact that a carryover work force will minimize disruption to the delivery of services during any period of transition and provide the Government the benefits of an experienced and trained work force rather than one that may not be familiar with the Government facility.

In order to address these concerns, section 1 of the Executive Order makes the following statement of policy:

> It is the policy of the Federal Government that solicitations and building service contracts for public buildings shall include a clause that requires the contractor under a contract that succeeds a contract for performance of similar services at the same public building to offer those employees (other than managerial or supervisory employees) under the predecessor contract whose employment will be terminated as a result of the award of the successor contract, a right of first refusal to employment under the contract in positions for which they are qualified. There shall be no employment openings under the contract until such right of first refusal has been provided. Nothing in this order shall be construed to permit a contractor to fail to comply with any provision of any other Executive order or laws of the United States.

The Executive Order requires implementing regulations to be issued by the Secretary of Labor in consultation with the Federal Acquisition Regulatory (FAR) Council, and that DOL and FAR regulations be issued which require inclusion of the contract clause in covered Federal solicitations and contracts. The Executive Order provides that the order does not confer any right or benefit enforceable against the United States, but that it is not intended to preclude judicial review of final decisions by the Secretary of Labor in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

To obtain public input and assist in the development of these regulations, the Department published a notice of proposed rulemaking in the **Federal Register** on July 18, 1995 (60 FR 36756), inviting comments until September 1, 1995, on a variety of questions and issues. As required by the Executive Order, the Department of Labor (DOL) has consulted with the FAR Council with respect to the implementation of the Executive Order.

III. Summary of Comments and Discussion

Comments were received in response to the notice from the Building Service Contractors Association International (BSCAI), the Service Employees International Union, AFL-CIO (SEIU), the Laborers' International Union of North America (LIUNA), and from Mr. Russell E. Willis.

The BSCAI questioned the legality of and the rationale for the Executive Order. These issues are clearly not within the purview of this rulemaking action. All other comments are summarized in the preamble under the relevant subsections.

Scope of Coverage

General Coverage (9.2)

The Executive Order applies only to ''building service contracts'' for ''public buildings'' where the contract is entered into by the United States. These terms are defined in the Executive Order and elsewhere in the regulations. The Order applies only to contracts of an amount equal to or greater than the simplified acquisition threshold, set by the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) at $100,000.

Where a contract is for both recurring building services and some other purpose, such as construction or other types of services, the building services for the public building are subject to the Order, but not any other portions of the contract. However, where the building services are only incidental to a contract for another purpose, such as incidental maintenance performed under a contract to operate a day-care center, the Order would not apply to such services. The standards used for determining when construction work performed under a mixed contract is covered by the Davis-Bacon Act are incorporated in the regulation as the standard for determining when building services for

a public building are more than incidental. See 29 CFR 4.116(c)(2); 48 CFR 22.402(b)(ii).

As discussed under § 9.3, below, the regulation is amended to make it clear that if a contract provides services for more than one public building, only buildings for which services were provided under a predecessor contract are covered.

It should be recognized that the coverage principles of the Executive Order differ from those of the McNamara-O'Hara Service Contract Act (SCA), 41 U.S.C. 351 *et seq.*, although there is significant overlap between the two programs. SCA prevailing wage requirements apply to service contracts of Federal agencies and the District of Columbia, the principal purpose of which is to furnish services in the United States through the use of service employees. 29 CFR 4.110. The Executive Order covers service contracts of $100,000 or more with the Federal government for the maintenance of a public building and contains no principal purpose requirement. Therefore, not all SCA covered contracts are within the scope of the Executive Order, and it may be that some contracts covered under the Executive Order are not covered by the SCA.

Building Services Contract (9.3)

Section 2(b) of the Executive Order defines the term ''building services contract'' to include contracts ''for recurring services related to the maintenance of a public building, e.g., janitorial, window washing, food service * * *.'' The regulations define ''recurring services'' to include services performed regularly or periodically throughout a contract (and its follow-on contract) at the same building. Contracts which are for non-recurring maintenance services, such as servicing of fixed equipment which is performed only one time each year, and contracts for services which are not maintenance services, such as operation of a day care center, are not subject to the Order.

SEIU suggested that the last sentence in § 9.3(a) be clarified to indicate which contracts are excluded. LIUNA expressed concern that restricting the Executive Order's coverage to successor or follow-on contracts ''at the same building'' may exclude a workforce that is employed at multiple locations, all of which are public buildings. LIUNA suggests that the final regulations should expressly state that the Executive Order applies to contracts such as pest control, trash removal, and window washing where the contractor's workforce is employed only at buildings covered by the Executive Order.

We agree that the intent of the Executive Order was to cover contracts which provided recurring building services at more than one public building. However, as provided in § 9.5(b)(5), the Executive Order does not apply in certain cases to services where the contractor's employees perform work both at a covered public building and at other locations under contracts not covered by the Executive Order. To avoid possible confusion, the discussion in § 9.3 of contracts which may be excluded from coverage has been moved to § 9.5. Sections 9.3 and 9.5 have been clarified in accordance with this discussion.

Public Building (9.4)

Section 2 of the Executive Order defining the term ''public building'' is patterned after the definition of a public building in Section 13 of the Public Buildings Act of 1959, 40 U.S.C. 612. The definition in the Executive Order is set forth and explained in § 9.4 of the regulations. Generally, buildings suitable for office or storage space and administered by the General Services Administration (GSA) or by another Federal agency under a delegation from GSA are considered to be ''public buildings.''

Many buildings are specifically excluded from the term ''public building,'' including buildings on properties of the United States Postal Service, on military installations, and on Department of Veterans Affairs installations used for hospital or domiciliary purposes. In addition, buildings ''on the public domain (including that reserved for national forests and other purposes)'' are not ''public buildings.'' We have been unable to find any regulation, opinion, or case law interpreting ''public domain'' as the term is used in the Public Buildings Act of 1959, but the term is commonly considered to refer to public lands in the West. Because these lands are administered by the Department of Interior, Bureau of Land Management (BLM) (*see* 43 CFR 2091.0–5(c)), ''public domain'' was so defined in the proposed regulations. In addition, because national forests are specifically referenced in the Executive Order, lands administered by the Department of Agriculture, U.S. Forest Service were included in the definition. Buildings on other Federal property are not considered to be ''on the public domain'' for purposes of the Executive Order.

SEIU and LIUNA objected to the proposed definition of ''public domain'' as too broad, because it includes all lands administered by the BLM and the U.S. Forest Service. LIUNA suggested a definition which would exclude from the ''public domain'' land that ''has not been specifically designated for a public or governmental use.'' SEIU suggests that the public domain exception apply to buildings on land ''which has not been reserved for any specific governmental purpose or purchased for a specific purpose such as an office building.''

These suggestions would be contrary to the plain meaning of the Executive Order, which states that ''public domain'' includes land ''reserved for national forests and other purposes. For purposes of the Executive Order, the Department agrees that the term ''public domain'' should be construed narrowly. The Department believes that an appropriate definition of ''public domain'' is (1) any public lands owned by the United States and administered by the Department of the Interior, Bureau of Land Management, and (2) the National Forest System administered by the Department of Agriculture, U.S. Forest Service. However, the Department agrees with the commenters that the ''public domain'' does not include Federal office buildings occupied by BLM or the U.S. Forest Service where such buildings are not on *lands administered by* those agencies, such as office buildings in cities and towns. The regulation has been clarified accordingly.

A unique situation arises with respect to the Pentagon. Originally, the Pentagon was considered a ''public building'' within the scope of the Public Buildings Act (not an exempt ''military installation''). Subsequently, Section 2804 of the National Defense Authorization for FY 1991 (10 U.S.C. 2674) removed the Pentagon from GSA's authority under the Public Buildings Act; however, that legislation did not change the Public Buildings Act's definition of a public building. For these reasons, and consistent with the purpose of the Executive Order to cover Government office buildings, the preamble to the proposed regulations stated that the Department of Labor considers the Pentagon to be a ''public building'' within the meaning of the Executive Order.

Russell Willis commented that by covering the Pentagon, the Executive Order appears to provide broader coverage than coverage under GSA's authority. SEIU and LIUNA commented that the Pentagon should be covered by the Executive Order.

As explained above, the Pentagon was removed from GSA's jurisdiction without similarly restricting the definition of ''public building.'' The

final rule has been revised to expressly provide that the Pentagon is not excluded from the Executive Order.

Leased buildings are not public buildings covered by the Executive Order unless they are being leased to the Government pursuant to lease-purchase contracts. It should be noted, however, that building services performed on a building being leased pursuant to a lease-purchase contract would be covered only if the services are being performed under a contract directly with the Government; building services performed by the lessor would be considered incidental to the lease (see § 9.2) and would not be covered.

LIUNA expressed concern that excluding other leased facilities would create a gap in protection for building service employees. The plain language of the Executive Order, however, limits coverage to ''Government-owned building(s).''

Coverage Limitations (9.5)

The Order does *not* apply to contracts under the simplified acquisition threshold, which is currently $100,000. In addition, certain other contracts are excluded from coverage pursuant to sections 3 (b)–(d) of the Executive Order, including: Contracts for commodities or services by the blind or severely handicapped awarded pursuant to the Javits-Wagner-O'Day Act, 41 U.S.C. 46–48a; contracts for certain services provided by sheltered workshops for the severely handicapped, awarded pursuant to the Edgar Amendment of the Treasury, Postal Services and General Government Appropriations Act, Pub. L. 103–329; and vending service contracts operated by the blind, awarded pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107.

The Executive Order also excludes ''services where the contractor's employees perform work at the public building and at other locations under contracts not subject to (the) Order (e.g., pest control or trash removal where the contractor's employees visit the site periodically and where the employees under the contract respond to service calls),'' provided that employees are not deployed in a manner designed to avoid the purposes of the Order. Thus, the manner in which employees are deployed by the successor contractor to perform the contract services, as well as the nature of the services must both be considered in determining whether a building services contract is subject to the Executive Order.

The following discussion of comments regarding the exclusion of contracts for services at a public building which are also performed at locations under contracts not subject to the Executive Order, also addresses the corresponding provision § 9.8(b)(3) regarding when a successor contractor must offer employment to the predecessor's employees.

In commenting on these sections (§§ 9.5 and 9.8(b)(3)) of the proposed rule, SEIU suggested that these sections erroneously interpret the Executive Order. SEIU is of the view that there is no basis in the Executive Order for excluding ''positions'' as provided in § 9.8(b)(3) of the proposed regulations, and that the exclusion refers only to ''services.'' SEIU asserts that this reference is to services performed under a particular building service contract. SEIU maintains that a particular contract should either be covered or not covered by the Executive Order, and once a building service contract is covered, the only ''positions'' excluded are those positions which are not deemed to be ''service employees'' within the meaning of SCA, 41 U.S.C. 357(d), citing section 4(b)(2) of the Executive Order.

In support of their view, SEIU explained that to exclude certain positions under covered contracts will mean that coverage depends upon whether particular employees of the predecessor contractor coincidentally decided to work for the same contractor at another building. SEIU contends that this result is inconsistent with the purpose of section 3(e) of the Executive Order and is likely to lead to confusion.

In a similar manner, LIUNA and SEIU also commented that the regulations could be read to exclude from coverage building service contracts where all or part of the workforce was incidentally employed by the contractor at other non-covered buildings. They suggested that, under the proposed regulation, the exclusion would depend upon whether the predecessor's employees happen to work for the contractor at another location; that contract coverage will be determined at any particular time based upon who the incumbent contractor is and the employment needs of that contractor's employees, rather than on the nature of the service contract itself and how those services are typically rendered to the government. They contend that such an unworkable result was not intended by the Executive Order. Similar or even identical building service contracts might be covered in one case and excluded in another.

SEIU pointed out that federal service contracts often have a work force that is employed less than full time under that contract. The employees will sometimes also apply to work for the same contractor under another non-federal contract. SEIU reports that the practice in the industry is for the workers to apply separately for work on the non-federal job. The SEIU notes the difference between this situation and one in which the entire workforce moves from location to location performing the same work under many different contracts, only a few of which are covered by the Executive Order.

SEIU recommends that § 9.8(b)(3) be deleted and that the final regulations clarify that entire contracts are either covered or not covered based upon whether the workforce that performs the contract was normally hired to (1) perform only that contract or (2) perform a number of contracts including contracts not covered by the Executive Order.

In a similar manner, LIUNA and SEIU also commented that the Executive Order provides examples of services which are excluded from coverage, where the employees only periodically visit the site and where the employees respond to service calls at other non-covered locations. As an exclusion from coverage, they contend that this provision should be given a narrow interpretation.

LIUNA suggests that § 9.8(b)(3) of the regulation be qualified by the addition of language identical to that found in proposed § 9.3(b)(1), limiting the exclusion to services offered ''once a year'' or on a ''one-time or annual basis.'' LIUNA asserts that otherwise, large categories of typical building service contracts which were intended to be covered, such as janitorial contracts performed continuously, but only for several hours a day, will be excluded from the Executive Order.

The Executive Order expressly excludes services where the contractor's employees perform work at the public building and at other locations under contracts not subject to the Executive Order and these regulations, provided that the employees are not deployed in a manner that is designed to avoid the purposes of the Order. The Executive Order provides examples of services which are excluded from coverage, where the employees only periodically visit the Federal building site to perform contract work and where the employees typically respond as well to service calls at non-covered locations. As an exclusion from coverage, this provision should be given a narrow interpretation. The Department agrees that the proposed regulations are confusing and could allow results which would be inconsistent with the intent of the Executive Order.

The regulations have been amended to look at how the services in question are performed, by examining whether a majority of the employees performing the services in question under the contract work both at buildings under contracts subject to the Executive Order and at other locations not subject to the Executive Order. Where a majority of the workers furnishing the contract services in question go from location to location, including other locations under contracts not subject to the Order, the exclusion will apply. In addition, the regulation provides that the exclusion does not apply where the employees separately applied for the non-federal job.

The Executive Order's exclusion would not apply if the employees are deployed in a manner designed to avoid the purposes of the Executive Order. The regulation has been clarified to provide that in examining whether or not there is an attempt to avoid coverage under the Executive Order, the Department will look carefully at how the predecessor contractor deployed its workforce. The Department may also consider the manner in which the work force is typically deployed to perform the services in question and the manner in which the contracts are structured to determine whether the building services contract meets the coverage provisions of the Executive Order.

Contract Clause (9.6)

Section 4 of the Executive Order specifies the contract clause that must be included in solicitations and contracts for building services that succeed contracts for the performance of similar work at the same public building. The regulations set forth additional provisions which are necessary to implement the Order. In accordance with Section 5 of the Order, a provision of the clause makes it clear that disputes under the Order are to be resolved in accordance with Department of Labor procedures rather than pursuant to the general disputes clause of the Contract Disputes Act, 41 U.S.C. 601 *et seq.*

Other provisions state that contract funds may be withheld in the event the contractor is determined to have violated the provisions of the Executive Order and is found liable for lost wages or other monetary relief, and require contractors to cooperate in investigations by the Department of Labor or the contracting agency.

Introductory language has been added so that the clauses would not be included in contracts which are excluded from the Executive Order pursuant to subsections (b), (c) and (d) of section 3 of the Order and §§ 9.5(b)(2), (3) and (4) of these regulations. However, the clauses must be included in contracts which may be exempt pursuant to subsection (e) (§ 9.5(b)(5) of the regulations) since exclusion of such a contract is dependent upon how workers are deployed by the successor contractor, rather than just the nature of the contract services and how the workers were deployed by the predecessor contractor, and therefore cannot be known at the time of the bid solicitation. A new paragraph (d) has been added, and the remaining paragraphs have been re-ordered accordingly, to address the exclusion from coverage in § 9.5(b)(5), where the services are performed by workers who also work at other locations under contracts not subject to the Executive Order.

The application of the clause in paragraph (c), concerning the list of employees to be provided by the predecessor contractor, is explained in § 9.11 of the regulations. Because paragraph (c) is confusing, however, and this provision rather than § 9.11 will be included in contracts, the language is revised to conform to § 9.11 by stating that the list must contain the names of all employees working for the contractor at the time the list is provided, to make it clear that compliance with this provision will constitute compliance with the referenced provision in the Service Contract Act regulations, and to use the title of the clause utilized in the Federal Acquisition Regulations. The Department notes that the situation may arise where the clauses are not included in a contract because it does not itself succeed a contract for the performance of similar services. In such circumstances, in order to assist the successor contractor, it is suggested that contracting agencies request that the predecessor contractor, where possible, provide the list required by the SCA regulations 60 days before the end of the contract.

Because the phrase ''[d]isputes arising out of this clause'' may be construed too broadly to include disputes over issues such as whether contractors should be reimbursed for costs incurred, paragraph (h) is revised to provide language similar to the SCA provision entitled ''Disputes Concerning Labor Standards'' in the FAR at 48 CFR 52.222–42(t).

Contractor Obligations

Employee coverage/staffing (9.7/9.8)

With certain exclusions, all employees performing recurring building services on the predecessor contract whose employment would otherwise be terminated as the result of the award of the contract to a new contractor, must in good faith be offered the right of first refusal to employment under the successor contract before any other employees may be hired. Because the successor contractor will not know whether an individual employee of the predecessor contractor will continue to be employed or will be terminated because of the change in contracts, the regulations state a presumption that all employees will be terminated when the predecessor's contract expires. This presumption can be defeated by specific evidence to the contrary, which the successor contractor could obtain through inquiries of, or contact with, the contracting officer, the employees, or the predecessor contractor after award of the contract to the successor.

The Executive Order does not require that a successor contractor perform a contract with the same number of employees as the predecessor. For example, if the predecessor employed twenty (20) custodial workers, the successor may determine it can perform the contract work with only eighteen (18) custodial workers. Thus if the contractor continues to employ five (5) of its existing workers, the offer of the right of first refusal would initially be limited to thirteen (13) employees of the predecessor. The successor contractor has discretion, within the constraints of these regulations, to determine which employees will first be offered a right of first refusal. If any of the predecessor's employees to whom the right of first refusal is offered declines that offer, then the successor must offer the right of first refusal to any remaining employees of the predecessor who were not originally offered the right of first refusal.

The question arises, however, whether the successor contractor's obligations continue throughout the performance of the contract. Although the language of the Executive Order could suggest such a result, it would be impractical and unduly burdensome. Therefore, the proposed regulations provided at § 9.8(c) that once the contract had been fully staffed and contract performance had commenced, the obligation to offer the right of first refusal ceased, and any subsequent vacant positions could be filled in accordance with the successor's normal business practices. The only proposed exception to this provision was if the evidence showed that the successor contractor increased the initial staffing level within the first three months after commencement of the contract. Three months was selected as a reasonable

period for continuing to impose an obligation to offer a right of first refusal in order to ensure that any necessary staffing adjustments during the start-up period would be covered, and at the same time to discourage attempts to manipulate the starting work force. The proposed regulation required that the right of first refusal be offered to any eligible employees of the predecessor contractor during this three-month period, or until the full staffing level is reached, whichever comes first.

Both SEIU and LIUNA believe the Department of Labor incorrectly interpreted the Executive Order in § 9.8(c) as relieving the successor contractor of its obligation to offer a right of first refusal to the predecessor's employees once the successor contractor reaches a full staffing level. They contend there is nothing in the Executive Order that relieves the successor employer of its obligation to offer a right of first refusal when vacancies become available under the contract. They believe the obligation by the successor contractor should continue until all predecessor employees have been offered employment or until three months after the successor contract has begun.

In that regard, these commenters stated that proposed § 9.8(c) (1) and (2) are inconsistent. Under proposed § 9.8(c)(2), a successor contractor who employs fewer employees than the predecessor contractor must continue to offer a right of first refusal during the first three months of the contract if the successor contractor decides to increase the size of the workforce. However, under proposed § 9.8(c)(1), the successor contractor does not need to continue to offer a right of first refusal if vacancies occur during the first three months of the contract due to termination of one of the employees who was employed under the successor contract. According to SEIU and LIUNA, the successor contractor should first be required to offer employment for that vacancy to any predecessor employees who have not yet received an offer of employment. They suggest that because DOL apparently determined in proposed § 9.8(c)(2) that three months is a reasonable time to continue the obligation of the contractor where vacancies occur due to increases in the workforce, that same time limitation should also be applied to vacancies created for other reasons and § 9.8(c)(1) should be so revised.

The Department agrees with the commenters and § 9.8(c)(1) is amended to reflect a continuing obligation of the successor contractor to offer employment to the predecessor's employees for any position vacancies which occur for any reason during the first three months of the contract, until all of the predecessor's employees have received a bona fide offer of employment.

Existing employees of the successor contractor. The Executive Order provides that employees who worked for the successor contractor for at least three months immediately preceding the commencement of the successor contract and who would otherwise face lay-off or discharge, may be employed on the successor contract without regard to the successor's obligation to offer the right of first refusal. The key elements are that the employee (1) must have been employed by the successor for at least three months prior to the commencement of the successor contract, *and* (2) would otherwise face lay-off or discharge. Employees who had been laid-off by the successor prior to the commencement of the successor contract or existing employees of the successor who are not facing lay-off or termination because, for example, they would continue to be employed on another contract, may not be employed on the successor contract until all eligible employees of the predecessor have been offered the right of first refusal.

No comments were received on this provision set forth in proposed § 9.7(b) and no revisions have been made.

Managerial and supervisory employees. The successor contractor is not required to offer a right of first refusal to employees who performed as managers or supervisors under the predecessor contract or to employees who are not service employees within the meaning of the SCA. Thus the proposed regulations provided at § 9.8(b)(1) that those employees who are employed as bona fide executive, administrative, or professional employees within the meaning of the regulations issued under the Fair Labor Standards Act (FLSA) at 29 CFR part 541 (and therefore are exempt from the provisions of the FLSA and SCA), need not be offered a right of first refusal, but the successor contractor is under no obligation to make an offer to such a position.

The successor contractor has complete discretion to decide who will be employed as managers and supervisors on the contract. If a service employee of the predecessor is qualified for a management/supervisory position, an offer of employment in that classification would satisfy the successor's obligation to offer the employee a right of first refusal, but the successor contractor is under no obligation to make an offer to such a position.

No comments were received on this provision and no revisions have been made.

Unsuitable employees. The successor contractor is not required to offer a right of first refusal to any employee who the successor reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job. The proposed regulation implementing this provision, § 9.8(b)(2), did not define what constituted a ''reasonable belief'' or ''suitable performance.'' However, the successor contractor must base the conclusion that an employee failed to perform suitably on information relative to a particular employee's past performance on the job obtained from a credible source, such as the predecessor contractor, the employee's supervisor or foreman, or the contracting agency. Information that does not directly relate to an employee's performance on the predecessor contract may not be used as a basis for failing to offer a right of first refusal.

BSCAI commented that the Executive Order will require a successor contractor to assume responsibility for workers that the contractor has not screened or trained. In addition, BSCAI stated that requiring the successor contractor to retain the predecessor's employees would defeat the purpose of changing contractors—i.e., quality, performance and cost could be compromised. The Executive Order expressly states, however, that the contractor ''is not required to offer a right of first refusal to any employee(s) of the predecessor contractor whom the contractor reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job.''

SEIU and LIUNA both commented that the exception should not become a loophole to allow contractors to avoid their obligations under the Executive Order based upon undocumented oral conversations. They stated that the regulations should ensure the exception is limited to the employee who clearly has not performed suitably. In that regard, both commenters suggested that the regulations should make clear that an employer's reasonable belief as to a particular employee's past performance should be based upon a contemporaneous written record of the predecessor contractor. It was their view that a written record would help avoid disputes in the administration of the Executive Order with regard to what the contractor knew or did not know when it made the decision not to offer a right

of first refusal. If there is no written record, SEIU would require that reports of the employee's performance be from persons with first-hand knowledge of the employee's past performance. Putting the burden of proof on the employer rather than the employee is clearly justified, according to SEIU and LIUNA.

SEIU further commented that the regulations should state clearly that a contractor's determination that an employee has not suitably performed his or her job must be based on that employee's particular past performance and not on the past performance of the predecessor contractor. The Executive Order, by using the phrase ''based on the particular employee's past performance,'' makes clear that the general performance of the predecessor contractor is irrelevant to the successor contractor's assessment of an employee's ability to perform the work. Further, SEIU recommended that the regulations provide that where an employee has worked for more than thirty days for the predecessor contractor and has not been disciplined for inadequate performance during that period of time, there would be a presumption that the employee can suitably perform the job. The presumption would make it more difficult for contractors to abuse this exception, while making it rebuttable would still allow contractors to eliminate any truly unsuitable employee. SEIU believes that the presumption would not cause an undue hardship on successor contractors since the Executive Order does not impose a continuing obligation to employ an employee after the employee starts work with the successor contractor. The successor employer will have an opportunity to evaluate the employee on the job and to take appropriate action against the employee if that employee is not performing adequately.

LIUNA recommended the creation of a similar presumption where an employee has not been subject to discipline by the predecessor contractor. The presumption would be greater for employees with greater seniority and no record of disciplinary action.

The Department agrees with the comments that the Executive Order does put the responsibility on the employer rather than the employee regarding establishing a reasonable belief that the employee has failed to perform suitably based on the employee's past performance. Therefore, the regulation is revised to provide a presumption that an employee has performed suitably. This presumption can be rebutted by showing the contractor's reasonable belief that the employee had failed to perform suitably—e.g., by evidence of past discipline for unsuitable performance or evidence directly from contracting agency officials that the particular employee had not performed suitably. The Department is of the view that it is not necessary in every case to have written or first-hand evidence, since such evidence frequently will not be available to contractors. The evidentiary standard has been tightened, however, to provide that the evidence must be ''based on credible information provided by a knowledgeable source * * *'' Establishing a presumption based on a specific time frame under which an employee has performed without disciplinary action goes beyond the intent of the Executive Order, which requires only the successor contractor's ''reasonable belief.'' In addition, the requirement that past performance be based on the particular employee's performance rather than the general performance of the predecessor contractor is further clarified.

Services at buildings not covered by the Order. The proposed regulation provided at § 9.8(b)(3) that the successor contractor is not obligated to offer a right of first refusal to employment in a position which will perform building services both at public buildings covered by the Executive Order and at other buildings not covered by the Order.

The comments on and discussion of this section are included above in § 9.5, which has been amended to include a new explanatory paragraph in § 9.5(b)(5)(ii). Section 9.8(b)(3) has been revised to include the language of the Executive Order exclusion, together with a cross-reference to § 9.5(b)(5)(ii), which applies this exclusion only where a majority of the contractor's employees perform work at the public building and at other locations under contracts not covered by the Executive Order.

Offer of Employment/Recordkeeping (9.9, 9.10)

The Executive Order requires the successor to make an express offer of employment to each employee and state the time within which the employee must accept such offer, which must be at least ten (10) days. The proposed regulation at § 9.9 stated that the offer could be made either in writing or orally at a meeting of the predecessor contractor's employees, and required that the contractor keep either a copy of the offer or documentation regarding the meeting at which the offer was made, which could consist of notations on the attendance roster and a copy of any written notice distributed.

The proposed regulations provided that the successor's obligation to extend a right of first refusal applied to all employees employed at the end of the contract, including any who began work within 60 days before the end of the predecessor contract and thus do not appear on the list of employees which § 9.11 requires the predecessor contractor to provide at least 60 days before the end of the contract. Given that successor contractors commonly hire the predecessor's work force without the convenience of such a list, it is not likely that the absence of such employees' names from the list would be unduly burdensome.

The proposed regulations at § 9.10 discussed what is a bona fide offer of employment. In general, an offer of employment will be presumed to be bona fide. Employees need not be offered employment in the same job that they were employed in under the predecessor contract, provided the employee is qualified for the position offered. Thus an employee may be equipped by education, training or experience to perform the duties of a position to be filled by the successor contractor, even though he or she held a position under the predecessor contractor that did not require or utilize such education, training or experience. The proposed regulation further provided that an offer of employment at a lower level or to a different position may be a basis for closely examining whether the offer is bona fide, *i.e.*, based on valid business reasons.

Both SEIU and LIUNA suggested that the final regulations should require that the ''express offer of employment'' be made in writing in order to avoid disputes regarding whether an offer is properly made. Both parties also recommend that the offer be made in a language in which the employees are fluent in order to make it meaningful. SEIU does not believe this would be a hardship on the employer since the employer must have a supervisory employee fluent in the language of the employees in order to properly supervise them.

The regulations have been revised to state that the employer should take reasonable efforts to make the employment offer in a language that the workers understand. We do not anticipate that this will place significant burden on contractors since both the predecessor and successor contractor will need to have some mechanism to communicate with the workers. This may be accomplished, for example, by having a co-worker or other person fluent in the workers' language at the meeting to translate or otherwise assist

employees who are not fluent in English. The Department recognizes that there may be a rare case where a contractor may need to hire an interpreter or translate a written offer.

SEIU, while noting that there is nothing in the Executive Order that requires a successor contractor to offer employment to the employee in the same position that he or she held with the predecessor contractor, stated concerns that employers may offer employment in lower level positions or different positions in order to discourage acceptance of offers of employment. SEIU believes that the regulations should go further than to state that where an employee is offered a position at a lower level, the basis for doing so should be ''closely examined to insure that the offers are bona fide.'' SEIU and LIUNA believe that the final regulation should create a presumption that offers of employment to a lower or less favorable position are not bona fide offers, but that the presumption can be overcome by the employer showing a valid business reason for offering that particular employee employment at a lower or less favorable position. They state that the creation of this presumption will help to protect against contractors frustrating the purposes of the Executive Order. Otherwise, according to LIUNA, this proposed subsection does not provide sufficient protections to employees who may have performed acceptably at higher level positions under previous contractors.

In addition, SEIU believes the final regulations should provide that there is a presumption that an employer has not made a good faith offer of employment if the employer terminates the employee within the first ninety days of employment. The presumption could be overcome by the employer by showing a valid business reason, such as a reduction in force or unsatisfactory performance by the employee. SEIU expressed the view that the use of the term ''good faith offer'' in the Executive Order was intended to guard against successor employers frustrating the intent of the Executive Order by making an offer, employing the individual and then terminating the individual immediately without any valid reason for doing so.

The Department agrees with the concerns expressed by the commenters and has revised § 9.10(b) to provide that an offer may be made to a position providing lower pay or benefits than the employee held with the predecessor if the contractor shows valid business reasons. The Department does not believe that it is appropriate to have a presumption that an offer is not bona fide where an employee is terminated from employment shortly after being hired. Terminations which are not for valid reasons would not ordinarily be in the employer's interest, due to such concerns as unemployment insurance obligations and similar reasons. However, the regulation has been revised to state that the Department will closely examine cases, including the facts and circumstances of the dismissal, where the timing of an employee's termination suggests that the offer of employment may not have been bona fide.

Predecessor's Obligation To Provide a List of Employees (9.11)

The Executive Order requires that, no less than 60 days before the completion of the contract, the predecessor contractor provide the contracting officer with a certified list of all service employees working at the Federal facility during the last month of the contract. The list is also required to contain anniversary dates of employment, either with the current or predecessor contractor (as appropriate), of each service employee. The contracting officer in turn will provide the list to the successor contractor, and it will be provided on request to employees or their representatives.

Except for the timing of submission of the list, this requirement is the same as the requirement under the SCA at 29 CFR 4.6(l)(2) that the predecessor furnish the names and anniversary dates at least ten days before contract termination. By providing the names of all service employees working on the contract 60 days in advance of termination, as required by the Executive Order, the predecessor contractor also fulfills its obligation under 29 CFR 4.6(l)(2). Thus the Executive Order does not create any new obligation on the predecessor, but simply moves forward the date the list must be submitted.

Because the predecessor contractor cannot know with certainty, 60 days in advance of termination, who will be performing on the contract in the final month, the regulations provide that the predecessor will provide the names of all service employees working on the contract at the time the list is submitted. The successor in turn must assume the employees listed will be working during the final month of the contract unless the facts demonstrate otherwise.

No comments were received on this provision, but language was added to clarify that the list is to contain the names of all employees working for the contractor at the Federal location.

Notice to Employees (9.12)

Service employees need to be advised of their right of first refusal in the event of contract transition. Various options were considered regarding how the employees should be so advised. Notice could easily be accomplished by the predecessor contractor, but it has no substantive obligations under the Order. The Department also considered placing the obligation on the successor contractor, but concluded that it would be more efficient to require notification by the contracting agency since the predecessor's employees are working regularly at the Federal building. Therefore, the proposed regulations required that the agency either post a notice or give individual notice to the predecessor contractor's employees. A prototype notice was included in an Appendix to the proposed regulations.

SEIU and LIUNA urged the Department to require that the notice also be provided by the predecessor contractor. They also suggested that the notice be posted both in English and in other languages spoken by the employees, if they are not fluent in English.

It remains the Department's view that the predecessor should have no obligation to provide notice. The Executive Order places no obligation on the predecessor contractor except providing a list of employees. The Department does not consider it appropriate to impose unnecessary notice obligations on *predecessor* contractors. The Executive Order clearly places the responsibility upon the *successor* contractor to ''make an express offer of employment'' to each service employee. Therefore, the Department continues to believe that notice to employees of their right of first refusal should be accomplished by placing the responsibility with the contracting agency. The Department expects the contracting agency to provide notice in English and in any other language that is understandable by a substantial portion of the service employees performing work under the predecessor contract. In response to comments, the Department expanded and clarified the prototype notice in the Appendix.

Enforcement (Subpart B)

Section 5 of the Executive Order provides that the Secretary of Labor is responsible for investigating and obtaining compliance with the Executive Order. It further provides that the Secretary has the authority to issue

final orders prescribing appropriate sanctions and remedies, including but not limited to, orders requiring employment and payment of wages lost.

The Executive Order also requires that alternative dispute mechanisms be utilized to the maximum extent possible in resolving enforcement issues. Thus, the thrust of the Executive Order is to keep the enforcement processes as simple and timely as possible, given the immediacy of both the employees' and the contractor's need for resolution.

Role of the Contracting Officer (9.100)

The enforcement provisions of the regulations seek to provide a process that encourages resolution at the earliest possible stage with fairness and efficiency. For this reason, the proposed regulations provided that complaints alleging violations shall be filed with the contracting officer, who will provide the employee and the successor contractor with information about the requirements of the Executive Order. If this is not sufficient to resolve the matter, the proposed regulations provided that the contracting officer will obtain statements from the parties of their respective positions and submit a report to the Department of Labor.

While SEIU is not opposed to DOL requiring that contracting officers attempt to resolve violations of the Executive Order as a first step, SEIU expressed concern that contracting officers not become an impediment to effective and quick resolution of disputes. SEIU contends the proposed regulations are seriously deficient because they permit contracting officers to block enforcement of employee rights by simply delaying completion of their responsibilities. SEIU and LIUNA suggest that this problem can be alleviated by placing a time limit on when the contracting officers must take action and recommend that the final regulations in § 9.100(b) provide that the contracting officer must perform his or her duties within ten days of receiving a complaint from an employee of the predecessor contractor. LIUNA suggests that if the matter is not resolved within ten days, the contracting officer should have ten additional days to obtain the statements from the parties and prepare a report to submit to the Wage and Hour Division. SEIU recommends that where a contracting officer has failed to gather information and report to Wage and Hour within ten days, an employee may go directly to the Wage and Hour Division to file a complaint. SEIU also suggests that when the contracting officer files his/her report with Wage and Hour, the statements of position submitted by the parties should be included.

The Department agrees with the thrust of these comments and has modified the regulations to establish a time frame of 30 days for the contracting officer to forward to Wage and Hour any unresolved complaints, together with the contracting officer's summary of the relevant facts and issues and the statements of the parties. In addition, the regulation is revised to permit an employee to file a complaint directly with Wage-Hour if the complaint has not been timely forwarded to Wage-Hour.

Role of the Department of Labor (9.101, 9.102)

If the contracting officer cannot resolve the dispute, proposed § 9.100(b) provided that the contracting officer will submit a report to the Wage and Hour Division. Based on the contracting officer's report, Wage and Hour could attempt to resolve the dispute through conciliation procedures; however, if that is not successful, Wage and Hour would investigate as necessary to determine the facts and issue a determination as to whether a violation occurred. The proposed regulations also provided that the Administrator has the authority to conduct an investigation on his or her own initiative, without a complaint.

SEIU contends the proposed regulations regarding conciliation efforts are inadequate as they do not set a time limit on how long the conciliation efforts should continue. SEIU believes conciliation procedures should not drag on unnecessarily and recommends the final regulations place a ten day limitation on conciliations, with a caveat that this period can be extended by the mutual consent of the parties. LIUNA also favors a ten day limit.

SEIU and LIUNA suggest that there ought to be a 30-day time limit from the date the conciliation effort is over for issuance of a written determination by the Administrator. LIUNA also states that if any time limits set forth in this section are not met, the complainant should have an automatic right to appeal to the next level of the complaint procedure and at the same time there should be an automatic employment offer to the employee who is the subject of the complaint. According to LIUNA, these revisions would ensure that the rights of employees are not rendered meaningless by a delay in the complaint procedures.

The Department is committed to prompt resolution of complaints under the Executive Order because employees' jobs and livelihood are at issue. Therefore §§ 9.101 and 9.102 are amended to provide that an investigation shall be commenced within 15 days of receipt of the contracting officer's report or the complaint unless the parties agree that the investigation should be delayed so that conciliation efforts can be completed.

However, the Department believes that setting a 30-day limit from the date a conciliation effort is terminated for issuance of a written determination by the Administrator is not appropriate. Where the conciliation effort is unsuccessful and the Department undertakes an investigation, 30 days may not be sufficient to conduct a thorough investigation and issue the Administrator's determination. Finally, the Department cannot concur with the suggestion that the contractor be required to hire an employee if the government fails to meet regulatory deadlines. This section, therefore, remains as proposed with minor clarification.

SEIU and LIUNA also suggest that § 9.102(c) should state how an aggrieved party may appeal a decision of the Administrator, how the request is made, and how long an aggrieved party has to file that appeal. Both commenters also state that the last sentence of this section should be clarified to make sure that copies of the Administrator's determination are given by certified mail to the complainant's representative, as well as to the successor contractor and the successor contractor's representative. They assert that under the proposed regulations, it is unclear whether there is a requirement to give copies to the complainant's representative.

The parties' concern in § 9.102(c) regarding appeal procedures are addressed in § 9.103. The Department concurs with the suggestion to clarify that copies of the Administrator's decision are to be sent to the complainant's representative(s) and the regulations are amended accordingly.

Hearing Procedures (9.103–9.107)

The proposed regulations provided that the Administrator's determination becomes a final order of the Secretary unless a request for a hearing is filed within 20 days of the date of the determination or, where the Administrator determines that relevant facts are not in dispute, a petition for review is filed with the Board of Service Contract Appeals (BSCA). Section 9.103 provided the procedures and time frames for appeal to the BSCA.

SEIU and LIUNA urge the Department to include clarifying language indicating that the Administrator will notify the

employee representative, if any, of her determination if there is no relevant issue of fact. The language of the regulations was intended to provide such notice. However, for the sake of clarification, § 9.103(b) of the regulations now expressly provides that the Administrator will notify the parties and their representatives, if any, ''where no relevant facts are in dispute.'' In addition, § 9.102(c) is clarified by providing that the notice of determination of a violation will be given to the parties and their representatives, if any. Finally, § 9.103(a) is clarified to provide that ''the Administrator shall advise the parties'' including their representatives, that the notice of determination shall become final unless a hearing is requested.

Sections 9.103, 9.106 and 9.107 have been amended to provide for review by the Administrative Review Board (ARB). (Effective May 3, 1996, the Administrative Review Board was established within the Department of Labor as a reorganization and consolidation of the functions of the former Board of Service Contract Appeals, the Wage Appeals Board, and the Office of Administrative Appeals, which prepared decisions for the Secretary in all other programs). *See* Secretary's Order 2–96, 61 FR 19,978 (May 3, 1996).

Consistent with the Executive Order's directive to favor the resolution of disputes by efficient and informal alternative dispute methods, § 9.104 encourages parties to utilize settlement judges to mediate settlement negotiations prior to an Administrative Law Judge (ALJ) hearing. The general ALJ regulations, 29 CFR part 18, § 18.9, already provide settlement judge procedures, and these procedures have been expressly adopted for use under the Executive Order.

Like the Department's ''whistleblower'' proceedings under 29 CFR part 24, it is anticipated that complainants may often appear *pro se*. Therefore § 9.105(f)(1) has been amended to provide that the ALJ's Rules of Evidence shall not apply. *See* 29 CFR 24.5(e).

If a complaint cannot be resolved informally through the conciliation or the settlement judge process, then § 9.105 provides procedures for a hearing before an ALJ. In most cases it is envisioned that the parties to the proceeding will be the contractor and the complainant (if any). However, the Wage-Hour Administrator may appear in any proceeding as a party or as *amicus curiae*, and will appear as a party in all cases in which ineligibility sanctions have been sought. The contracting agency may also appear as *amicus curiae*.

As provided in § 9.106, the ALJ shall issue a decision within 60 days after the proceeding at which evidence was submitted. If the ALJ determines that a violation has occurred, the ALJ may order appropriate relief (§ 9.106(c)). Section 9.107 provides the procedures for appealing an ALJ decision to the ARB.

The proposed regulations provided for assessment of costs and stated in the preamble that the Department was considering providing for payment of attorney fees or costs where the complainant prevails.

SEIU urged that §§ 9.106(c) and 9.107(f) of the final regulations be amended to empower the ALJ and the ARB to award attorney fees to a prevailing complaining employee. The SEIU further suggests that an award of attorney fees should be mandatory where the employee prevails.

LIUNA also commented that the ALJ should be expressly permitted to assess attorney fees, since it would be a permissible interpretation of the Executive Order's requirements and a reasonable means to enforce the Executive Order. LIUNA further states that § 9.107(f) should contain a similar provision to allow an employee to pursue his or her appeal rights.

Russell Willis commented that express statutory authority is necessary to provide for payment of attorney fees and costs.

The Supreme Court has held that under the American Rule, which governs the award of attorney's fees in the United States, the prevailing party may not recover attorney's fees as costs or otherwise absent statute or enforceable contract. *See Alyeska Pipeline Service Co. v. The Wilderness Society*, 421 U.S. 240, 245–247 (1975). Because neither the Executive Order nor any statutes provide for the award of attorney fees, there is an insufficient legal basis to provide for attorney fees by regulation in disputes arising under the Executive Order. Sections 9.106(c) and 9.107(f) have been clarified by expressly excluding attorney fees from an assessment of costs by the Administrative Law Judge or the Administrative Review Board.

Finally, the legislative history of the Equal Access to Justice Act (EAJA), 5 U.S.C. 504, indicates that the Act excludes from coverage those hearings which are not required by an underlying statute. Similarly, the EAJA regulations promulgated by the Department of Labor exclude from coverage those proceedings which are established by regulation, but are not required by the governing statute. *See* 29 CFR part 16. Neither the underlying statute, nor Executive Order 12933, require hearings. Accordingly, in any proceeding conducted pursuant to the provisions of §§ 9.105–9.107, the Administrative Review Board shall have no power or authority to award attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act. Appropriate language has been included in the regulations.

Remedies/Ineligibility Sanction (9.108–9.109)

Section 5 of the Executive Order provides that the Secretary has the authority to prescribe appropriate remedies, including orders requiring employment and payment of wages lost. Proposed § 9.108 also set forth withholding procedures to obtain wages due, and a provision for suspension of payments if the predecessor fails to provide the contracting officer with a list of employees on the contract. Furthermore, where a contractor has failed to comply with any order of the Secretary or has committed willful violations of the Executive Order or its regulations, the contractor and its responsible officers, and any firm in which the contractor has a substantial interest, shall be ineligible to be awarded any contract or subcontract of the United States for a period of up to three years. Since debarment is only imposed for the most serious of violations—i.e., violations that are willful or failure to comply with an order of the Secretary, which in itself is a willful violation—the proposed regulations at § 9.109 prescribed a three-year period for debarment in all cases.

SEIU stated that the ineligibility sanctions should be mandatory whenever there are violations unless the contractor can show that it acted in good faith; LIUNA suggested that the regulation specify that all violations are presumed to be willful.

The plain language of the Executive Order grants the Secretary the discretion to impose debarment where a contractor fails to comply with any order of the Secretary or has committed a willful violation. Thus, the standard proposed by the commenters is not consistent with that provided by the Executive Order and is not adopted in the final rule.

Definitions (9.200)

The regulations include definitions of several important terms. The definition of ''service employee'' is based on the Service Contract Act, as the Executive Order provides. Coverage under the

Executive Order, however, applies only to those service employees performing recurring building services, and not to other employees on contracts subject to SCA.

LIUNA suggested that the term ''contract'' and ''building service contract'' should include ''subcontracts.''

Because the language of the Executive Order does not specifically refer to subcontracts, and because the requirements are not practical as applied to subcontracts, the regulations contain no ''flow-down'' requirements for subcontractors. No amendment is made to this provision.

Dates of Applicability

The clauses contained in § 9.6 must be included in all contracts awarded after the effective date of these regulations. In addition, the regulations shall apply as of the effective date to all contracts awarded prior to the effective date which contain the clauses set forth in section 4 of the Executive Order (§ 9.6 (a), (b), (c), and (e) of the regulations), and those contracts should be amended where practicable to incorporate the additional clauses set forth in the regulations (§ 9.6 (d), (f), (g), and (h)).

In order to provide successor contractors with the convenience of a list of names from the predecessor contractor earlier than the SCA requirement of 10 days before completion of the contract, all existing contracts (whether or not they contain the clauses of the Executive Order) should be amended to include the clause in § 9.6(c).

Executive Order 12866/§ 202 of the Unfunded Mandates Reform Act of 1995/Executive Order 12875/Small Business Regulatory Enforcement Fairness Act

Because this rule provides the initial implementing regulations for an Executive Order issued by the President, it is being treated as a ''significant regulatory action'' within the meaning of Executive Order 12866. However, no economic analysis is required because the rule will not have a significant economic impact. For the same reason, the rule is not a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act. The total value of Federal contracts covered by Executive Order 12933 is less than $100 million, and only a small fraction of that total may involve terminations of predecessor employees. General Services Administration data for Fiscal Year 1994 indicate that no more than 88 new building service contract actions were taken, with a value of $39.2 million. Since only a very small percentage of that dollar value involves terminations, the economic impact of the Executive Order is minimal.

In addition, the rule does not require a § 202 statement under the Unfunded Mandates Reform Act of 1995. Although State, local, and tribal governments are not precluded from receiving Federal contracts to provide building services at public buildings, the Department is not aware of any governmental entities that are performing public building service contracts within the purview of this rule. Thus this rule would not result in a mandate upon a State, local, or tribal government for purposes of Executive Order 12875. The Executive Order simply requires contractors to the Federal Government to follow the practice which is currently followed in most cases in any event as a good business practice, and will improve Government efficiency and economy in those few cases where the practice would not otherwise have been followed by decreasing or eliminating the loss of productivity that may occur when experienced employees are terminated.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires agencies to prepare regulatory flexibility analyses, and to develop alternatives, whenever possible, in drafting regulations that will have a ''significant economic impact on a substantial number of small entities.'' The Department has determined that such an analysis is not required for this rulemaking. This conclusion is based on the fact that the Executive Order mandates a practice which is already followed in almost all cases. Accordingly, this regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The Administrator has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Therefore, no regulatory flexibility analysis is required.

Document Preparation

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 9

Employment, Federal buildings and facilities, Government contracts, Labor, Law enforcement.

Signed at Washington, DC, on this 16th day of May, 1997.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

Accordingly, for the reasons set out in the preamble, 29 CFR part 9 is added as follows:

PART 9—NONDISPLACEMENT OF QUALIFIED WORKERS UNDER CERTAIN CONTRACTS

Subpart A—How is Executive Order 12933 Applied?

Covered Contracts Generally

Sec.
9.1 What is the purpose of Executive Order 12933?
9.2 Which contracts are covered by Executive Order 12933?
9.3 What is a ''building service contract?''
9.4 What is a ''public building?''
9.5 Which contracts are not covered by Executive Order 12933?

Contract Clauses

9.6 What contract clauses must be included in covered contracts?

Contractor Obligations

9.7 May a contractor employ persons other than the predecessor contractor's employees?
9.8 Must the successor contractor offer a right of first refusal to all employees of the predecessor contractor?
9.9 In what manner must the successor contractor offer employment?
9.10 What constitutes a bona fide offer of employment?
9.11 What are the obligations of the predecessor contractor?

Notice to Employees

9.12 How will employees learn of their rights?

Subpart B—What Enforcement Mechanisms does Executive Order 12933 Provide?

Complaint Procedures

9.100 What may employees do if they believe that their rights under the Executive Order have been violated?
9.101 What action will the Wage and Hour Division take to try to resolve the complaint?
9.102 How are complaints resolved if conciliation is unsuccessful?
9.103 How are decisions of the Administrator appealed?

Administrative Law Judge Procedures

9.104 How may cases be settled without formal hearing?
9.105 What procedures are followed if a complaint cannot be resolved through conciliation or settlement agreement?
9.106 What rules apply to the decision of the administrative law judge?

Appeal Procedures

9.107 How may an administrative law judge's decision or the Administrator's determination be appealed?

Enforcement Remedies

9.108 What are the consequences to a contractor of not complying with the Executive Order?

9.109 Under what circumstances will ineligibility sanctions be imposed?

Subpart C—Definitions

9.200 Definitions

Appendix to Part 9—Notice to Building Service Contract Employees

Authority: Secs. 4–6, Executive Order 12933; 5 U.S.C. 301.

Subpart A—How is Executive Order 12933 Applied?

Covered Contracts Generally

§ 9.1 What is the purpose of Executive Order 12933?

The Government's procurement interests in both economy and efficiency are furthered when a successor contractor carries over an existing work force. A carryover work force minimizes disruption in the delivery of services during a period of transition and provides the Government the benefit of an experienced and trained work force. Executive Order 12933 therefore generally requires that successor contractors performing building service contracts for public buildings offer a right of first refusal to employment under the contract to those employees under the predecessor contract whose employment will be terminated as a result of the award of the successor contract.

§ 9.2 Which contracts are covered by Executive Order 12933?

(a) The Executive Order and these rules apply to ''building service contracts'' for ''public buildings'' where the contract is entered into by the United States in an amount equal to or greater than the simplified acquisition threshold of $100,000, as set forth in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(b)(1) Except as provided in paragraph (b)(2) of this section, a contract which includes a requirement for recurring building services is subject to the Executive Order and these regulations even if the contract also contains other non-covered services or non-service requirements, such as construction or supplies, and even if the contract is not subject to the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* However, the requirements of the Executive Order apply only to the building services portion of the contract, and only to those buildings for which services were provided under a predecessor contract.

(2) The requirements of the Executive Order do not apply to building services which are only incidental to a contract for another purpose, such as incidental maintenance under a contract to operate a day-care center.

(i) Building service requirements will not be considered incidental, and therefore will be subject to the Executive Order, where

(A) the contract contains specific requirements for a substantial amount of building services or it is ascertainable that a substantial amount of building services will be necessary to the performance of the contract (the word ''substantial'' relates to the type and quantity of building services to be performed and not merely to the total value of such work, whether in absolute dollars or cost percentages as compared to the total value of the contract); and

(B) the building services work is physically or functionally separate from, and as a practical matter is capable of being performed on a segregated basis from the other work called for by the contract.

(ii) Building services performed on a building being leased to the Government pursuant to a lease-purchase contract are considered incidental and not covered unless the services are being performed under a contract directly with the Government.

§ 9.3 What is a ''building service contract?''

(a) A *building service contract* is a contract for *recurring services* related to the maintenance of a public building. *Recurring services* are services which are required to be performed regularly or periodically throughout the course of a contract, and throughout the course of the succeeding or follow-on contract(s) at one or more of the same buildings. Examples of building services contracts include, but are not limited to, contracts for the recurring provision of custodial or janitorial services; window washing; laundry; food services; guard or other protective services; landscaping and groundskeeping services; and inspection, maintenance, and repair of fixed equipment such as elevators, air conditioning, and heating systems.

(b)(1) Contracts which provide maintenance services only on a non-recurring basis are not ''building service contracts'' within the meaning of the Executive Order and are not subject to its provisions. For example, a contract to perform servicing of fixed equipment once a year, or to mulch a garden on a one-time or annual basis, is a non-recurring maintenance contract that is not covered by the Executive Order.

(2) Contracts for the provision of services which may be performed in a public building but are not ''building service contracts'' as defined in paragraph (a) of this section are not covered by the Executive Order and these rules. For example, a contract for day care services in a Federal office building would not be subject to the Executive Order.

§ 9.4 What is a ''public building?''

(a) A *public building* is any building owned by the United States which is generally suitable for office or storage space or both for the use of one or more Federal agencies or mixed ownership corporations, together with its grounds, approaches, and appurtenances. Public buildings shall include:

(1) Federal office buildings;
(2) Customhouses;
(3) Courthouses;
(4) Border inspection facilities;
(5) Warehouses;
(6) Records centers;
(7) Appraiser stores;
(8) Relocation facilities; and
(9) Similar Federal facilities.

(b)(1) Public buildings do not include any building on the public domain. The public domain includes only: those public lands owned by the United States and administered by the Department of Interior, Bureau of Land Management; and the National Forest System administered by the Department of Agriculture, U.S. Forest Service. The public domain does not include Federal buildings, such as office buildings in cities or towns, which are occupied by the Bureau of Land Management or U.S. Forest Service where such buildings are not on lands administered by those agencies.

(2) Also not covered are any buildings:

(i) On properties of the United States in foreign countries;

(ii) On Native American and Native Eskimo properties held in trust by the United States;

(iii) On lands used in connection with Federal programs for agricultural, recreational, and conservation purposes, including research in connection therewith;

(iv) On or used in connection with river, harbor, flood control, reclamation, or power projects; or for chemical manufacturing or development projects; or for nuclear production, research, or development projects;

(v) On or used in connection with housing and residential projects;

(vi) On properties of the United States Postal Service;

(vii) On military installations (including any fort, camp, post, naval training station, airfield, proving ground, military supply depot, military school, or any similar facility of the Department of Defense, but not including the Pentagon);

(viii) On installations of the National Aeronautic and Space Administration, except regular office buildings; and

(ix) On Department of Veterans Affairs installations used for hospital or domiciliary purposes.

(3) Buildings leased to the Government are not public buildings unless the building is leased pursuant to a lease-purchase contract.

§ 9.5 Which contracts are not covered by Executive Order 12933?

(a) A contract is not covered by the Executive Order unless it requires the provision of recurring building services, and unless the contract succeeds a contract for similar work at one or more of the same public building(s).

(b) The Executive Order expressly excludes:

(1) Contracts for services under the simplified acquisition threshold ($100,000);

(2) Contracts for commodities or services produced or provided by the blind or severely handicapped, awarded pursuant to the Javits-Wagner-O'Day Act, 41 U.S.C. 46–48a, and any future enacted law creating an employment preference for some group of workers under building service contracts;

(3) Guard, elevator operator, messenger, or custodial services provided to the Government under contracts with sheltered workshops employing the severely handicapped as outlined in the Edgar Amendment, section 505 of the Treasury, Postal Services and General Government Appropriations Act, 1995, Pub. L.103–329;

(4) Agreements for vending facilities operated by the blind, entered into under the preference provisions of the Randolph-Sheppard Act, 20 U.S.C. 107; and

(5)(i) As explained in paragraph (b)(5)(ii) of this section, services where the contractor's employees perform work at the public building and at other locations under contracts not subject to the Executive Order and these regulations, provided that the employees are not deployed in a manner that is designed to avoid the purposes of the Order.

(ii) The successor contractor is not required to offer a right of first refusal for employment where a majority of the successor contractor's employees performing the particular service under the contract work at the public building and at other locations under contracts not subject to the Executive Order and these regulations. Examples include, but are not limited to, pest control or trash removal services where the employees periodically visit various Government and non-Government sites, and make service calls to repair equipment at various Government and non-Government buildings. This exclusion does not apply, however, where the service employees' work on non-covered contracts is not performed as a part of the same job as their work on the Federal contract in question, or where they separately apply for work on the non-Federal contracts. This exclusion also does not apply where the employees are deployed in a manner that is designed to avoid the purposes of the Executive Order. In making this determination, all the facts and circumstances are examined, including particularly the manner in which the predecessor contractor deployed its workforce to perform the services, the manner in which the work force is typically deployed to perform such services, and the manner in which the contract is structured.

Contract Clauses

§ 9.6 What contract clauses must be included in covered contracts?

The clauses set forth in paragraphs (a) through (h) of this section shall be included in full by the contracting agency in every solicitation and contract entered into by the United States equal to or in excess of the simplified acquisition threshold of $100,000, where the contract requires the provision of building services and succeeds a contract for the performance of similar services at one or more of the same public building(s), except that such clauses need not be included in any contract which is excluded from coverage of the Executive Order pursuant to paragraph (b) (2), (3) or (4) of § 9.5 of this part.

(a) Consistent with the efficient performance of this contract, the contractor shall, except as otherwise provided herein, in good faith offer those employees (other than managerial and supervisory employees) under the predecessor contract whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the employees were hired, a right of first refusal to employment under the contract in positions for which the employees are qualified. The contractor shall determine the number of employees necessary for efficient performance of this contract and may elect to employ fewer employees than the predecessor contractor employed in connection with performance of the work. Except as provided in paragraph (b) of this section, there shall be no employment opening under the contract, and the contractor shall not offer employment under the contract, to any person prior to having complied fully with this obligation. The contractor shall make an express offer of employment to each employee as provided herein and shall state the time within which the employee must accept such offer, but in no case shall the period within which the employee must accept such offer be less than 10 days.

(b) Notwithstanding the contractor's obligation under paragraph (a) of this section, the contractor:

(1) May employ on the contract any employee who has worked for the contractor for at least 3 months immediately preceding the commencement of this contract and who would otherwise face lay-off or discharge, and

(2) Is not required to offer a right of first refusal to any employee(s) of the predecessor contractor who are not service employees within the meaning of the McNamara-O'Hara Service Contract Act, 41 U.S.C. 357(b), and

(3) Is not required to offer a right of first refusal to any employee(s) of the predecessor contractor who the contractor reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job.

(c) In accordance with paragraph (n) of the clause of this contract entitled ''Service Contract Act of 1965, as Amended'' and 29 CFR 4.6(l)(2), the contractor shall, no less than 60 days before completion of this contract, furnish the Contracting Officer with a certified list of the names of all service employees working at the Federal facility at the time the list is submitted. The list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each service employee, as appropriate. The Contracting Officer will provide the list to the successor contractor and the list shall be provided on request to employees or their representatives. Compliance with this paragraph shall constitute compliance with paragraph (n) of the clause entitled ''Service Contract Act of 1965, as Amended'' and 29 CFR 4.6(l)(2).

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(d) The requirements of this clause do not apply to services where a majority of the contractor's employees performing the particular services under the contract work at the public building and at other locations under contracts not subject to Executive Order 12933, *provided* that the employees are not deployed in a manner that is designed to avoid the purposes of the Executive Order.

(e) If it is determined, pursuant to regulations issued by the Secretary of Labor, that the contractor is not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the contractor, as provided in Executive Order No. 12933, the regulations of the Secretary of Labor at 29 CFR part 9, and relevant orders of the Secretary of Labor, or as otherwise provided by law.

(f) The Contracting Officer shall withhold or cause to be withheld from the prime contractor under this or any other Government contract with the same prime contractor such sums as an authorized official of the Department of Labor requests, upon a determination by the Administrator, the Administrative Law Judge, or the Administrative Review Board, that the prime contractor failed to comply with the terms of this clause, and that wages lost as a result of the violations are due to employees or that other monetary relief is appropriate.

(g) The contractor shall cooperate in any investigation by the contracting agency or the Department of Labor into possible violations of the provisions of this clause and shall make records requested by such official(s) available for inspection, copying, or transcription upon request.

(h) Disputes concerning the requirements of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 9. Disputes within the meaning of this clause include disputes between or among any of the following: The contractor, the contracting agency, the U.S. Department of Labor, and the employees under the contract or its predecessor contract.

Contractor Obligations

§ 9.7 May a contractor employ persons other than the predecessor contractor's employees?

(a) There shall be no employment openings under a contract subject to the Executive Order and the successor contractor shall not offer employment under the contract until it fully complies with its obligation to offer a right of first refusal, except as provided under paragraph (b) of this section and § 9.8.

(b) A successor contractor may employ on the contract any employee who the contractor demonstrates has worked for that contractor for at least 3 months immediately preceding the commencement of the contract *and* would face lay-off or discharge if not employed on the subject contract.

§ 9.8 Must the successor contractor offer a right of first refusal to all employees of the predecessor contractor?

(a)(1) Except as provided in this section, a successor contractor shall offer employment under the contract (*i.e.*, a ''right of first refusal'') to those employees of the predecessor contractor who, in the final month of the contract, provided recurring building services similar to the services to be performed at one or more of the same public building(s) under the successor contract, and whose employment will be terminated as a result of the award of the successor contract or expiration of the contract under which the employees were hired.

(2) Unless the predecessor contractor (either directly or through the contracting agency) or the individual employee in question provides evidence to the contrary, the successor contractor must presume that *all* service employees of the predecessor contractor who are working at the same public building during the final month of contract performance will be terminated when the contract ends.

(b)(1) A successor contractor is not required to offer a right of first refusal to any managerial or supervisory employee or to any employee of the predecessor contractor who is not a service employee within the meaning of the McNamara-O'Hara Service Contract Act, 41 U.S.C. 357(b). ''Managerial and supervisory'' employees and employees who are not ''service employees'' are those persons engaged in the performance of services under the contract who are employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in the Fair Labor Standards Act regulations, 29 CFR part 541.

(2) The successor contractor must presume that all employees working under the predecessor contract in the last month of performance performed suitable work on the contract. However, a successor contractor is not required to offer a right of first refusal to an employee of the predecessor contractor if the successor contractor is able to demonstrate its reasonable belief that the employee in fact failed to perform suitably on the predecessor contract—for example, through evidence of disciplinary action taken for poor performance or evidence directly from the contracting agency that the particular employee did not perform suitably. The successor contractor must demonstrate that its belief that an employee has failed to perform suitably on the predecessor contract is reasonable and based upon credible information provided by a knowledgeable source such as the predecessor contractor, the employee's supervisor, or the contracting agency. Information regarding the general performance of the predecessor contractor is not sufficient.

(3) The successor contractor is not required to offer a right of first refusal for employment where a majority of the contractor's employees performing the service in question under the contract work both at the public building and at other locations under contracts not subject to the Executive Order and these regulations. See § 9.5(b)(5)(ii) of this part.

(c) The successor contractor shall determine the number of employees necessary for the efficient performance of the contract. The contractor may, for bona fide staffing or work assignment reasons, employ fewer employees than the predecessor contractor. Thus, the successor contractor need not extend the right of first refusal to *all* employees of the predecessor contractor, but must offer employment only to the number of eligible employees it believes necessary to meet its anticipated staffing pattern, except that:

(1) Where a successor contractor offers a right of first refusal to fewer employees than were employed by the predecessor contractor, its obligation to offer employment under the contract to the predecessor's employees continues for three months after commencement of the contract to fill vacancies created by employee termination, either voluntarily or for cause. For example, a contractor with eighteen (18) employment openings and a list of twenty (20) predecessor contractor's employees must continue to offer a right of first refusal to individuals on the list until eighteen (18) of the employees accept the contractor's employment offer, or until all of the employees have either accepted or refused the job offer. Further, if an employee quits or is terminated within three months of contract commencement and the contractor determines that it must hire an additional employee to sufficiently perform the contract requirements, the contractor must first offer a right of first

refusal to an eligible employee of the predecessor contractor and must continue to offer a right of first refusal to the predecessor's employees until one of the employees accepts the contractor's employment offer, or, except as otherwise provided in this Section, until all of the employees have refused a job offer.

(2) If a successor contractor raises its staffing level within three months of the commencement of contract performance, its obligation to offer employment under the contract to eligible employees continues until the higher staffing level is reached. For example, if a contractor determines two months into the contract period that it must hire an additional ten (10) employees to sufficiently perform the contract requirements, the contractor must first offer a right of first refusal to ten (10) eligible employees of the predecessor contractor (or to all of the employees of the predecessor contractor who have not previously been offered a right of first refusal if less than ten remain), and must continue to offer a right of first refusal to the predecessor's employees until ten (10) of the employees accept the contractor's employment offer, or, except as otherwise provided in this Section, until all of the employees have refused a job offer.

§ 9.9 In what manner must the successor contractor offer employment?

(a) Except as provided in § 9.7 and 9.8 of this part, a successor contractor must make a bona-fide express offer of employment to each of the predecessor contractor's employees before offering employment on the contract to any other person. The successor contractor must offer employment to each employee, either individually in writing or orally at a meeting attended by a group of the predecessor contractor's employees. In order to ensure that the offer is effectively communicated, the successor contractor should take reasonable efforts to make the offer in a language that each worker understands, for example, by having a co-worker or other person fluent in the worker's language at the meeting to translate or otherwise assist an employee who is not fluent in English.

(b) For a period of one year, the contractor must maintain copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location and attendance roster of any employee meeting(s) at which the offers were extended, a summary of each meeting and a copy of any written notice which may have been distributed, and the names of the predecessor contractor's employees to whom an offer was made. The contractor must provide copies of such documentation upon request of any authorized representative of the contracting agency or Department of Labor.

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(c) The contractor shall state the time within which an employee must accept an employment offer, but in no case may the period in which the employee has to accept the offer be less than 10 days.

(d) The successor contractor's obligation to offer a right of first refusal exists even if the successor contractor has not been provided a list of the predecessor contractor's employees, or the list does not contain the names of all persons employed during the final month of contract performance.

§ 9.10 What constitutes a bona fide offer of employment?

(a) As a general matter, an offer of employment will be presumed to be a bona fide offer of employment. An offer of employment need not be to a position similar to that which the employee previously held, but the employee must be qualified for the position. Information regarding an employee's qualifications shall ordinarily come directly from the employee. If a question arises concerning an employee's qualifications, that question shall be decided based upon the employee's education and employment history with particular emphasis on the employee's experience on the predecessor contract.

(b) An offer of employment to a position providing lower pay or benefits than the employee held with the predecessor contractor will be considered bona fide if the contractor shows valid business reasons (not related to a desire that the employee refuse the offer, or that other employees be hired). Where the timing of an employee's termination suggests that the offer of employment may not have been bona fide, the facts and circumstances of the offer and the termination will be closely examined to be sure the offer was bona fide.

§ 9.11 What are the obligations of the predecessor contractor?

(a) Not less than 60 days before completion of its contract, the predecessor contractor must furnish the contracting officer with a certified list of the names of all service employees working for the contractor at the Federal facility at the time the list is submitted, together with their anniversary dates of employment. The contracting officer in turn shall provide the list to the successor contractor and, if requested, to employees of the predecessor contractor or their representatives.

(b) Unless the predecessor contractor (either directly or through the contracting agency) or the individual employee in question provides evidence to the contrary, the successor contractor must presume that *all* service employees of the predecessor contractor who are working at the same public building during the final month of contract performance will be terminated when the contract ends.

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Notice to Employees

§ 9.12 How will employees learn of their rights?

Where the successor contract is a contract subject to the Executive Order and these regulations, the contracting officer (or designee) will provide written notice to service employees of the predecessor contractor who are engaged in building services of their possible right to an offer of employment. Such notice may either be posted in a conspicuous place at the worksite or may be delivered to the employees individually. Contracting officers may either use the notice set forth in Appendix A to this part or another form with the same information.

Subpart B—What Enforcement Mechanisms does Executive Order 12933 Provide?

Complaint Procedures

§ 9.100 What may employees do if they believe that their rights under the Executive Order have been violated?

(a) Any employee of the predecessor contractor who believes he or she was not offered employment by the successor contractor as required by the Executive Order and these regulations may file a complaint with the contracting officer of the appropriate Federal agency.

(b) Upon receipt of a complaint, the contracting officer (or designee) shall provide information to the employee(s) and the successor contractor about their rights and responsibilities under the Executive Order. If the matter is not resolved through such actions, the contracting officer shall, within 30 days from receipt of the complaint, obtain statements of the positions of the parties and forward the complaint and statements, together with a summary of the issues and any relevant facts known to the contracting officer, to the nearest District Office of the Wage and Hour

Division, Employment Standards Administration, U.S. Department of Labor, with copies to the contractor and the complaining employee(s).

(c) If the contracting officer has not forwarded the complaint to the Wage and Hour Division within 30 days of receipt of the complaint, as required by paragraph (b) of this section, the complainant may refile the complaint directly with the nearest District Office of the Wage and Hour Division.

§ 9.101 What action will the Wage and Hour Division take to try to resolve the complaint?

After obtaining the necessary information from the contracting officer regarding the alleged violations, the Wage and Hour Division may promptly contact the successor contractor and attempt, through conciliation procedures, to obtain a resolution to the matter which is satisfactory to both the complainant(s) and the successor contractor and consistent with the requirements of the Executive Order and these regulations. The Wage and Hour Division will commence an investigation in accordance with § 9.102 of this part if the dispute has not been satisfactorily resolved within 15 days of receipt of the contracting officer's report or the complaint, unless the successor contractor and the complainant(s) agree to a delay in the commencement of the investigation.

§ 9.102 How are complaints resolved if conciliation is unsuccessful?

(a) Upon receipt of a contracting officer's report or a complaint filed in accordance with § 9.100(c) of this part, the Wage and Hour Division, U.S. Department of Labor, will investigate as necessary to gather sufficient data concerning such case unless the dispute has been resolved through conciliation between the parties. Such an investigation will be commenced within 15 days of receipt of the contracting officer's report or the complaint unless conciliation efforts are still underway and the complainant(s) and the successor contractor have agreed to a delay in the investigation so that conciliation efforts may be completed. The Administrator may also initiate an investigation at any time on his or her own initiative. As part of the investigation, the Administrator may inspect the records of the predecessor and successor contractors (and make copies thereof), may question the predecessor and successor contractors and any employees of these contractors, and may require the production of any documentary or other evidence deemed necessary to determine whether a violation of the Executive Order (including conduct warranting imposition of ineligibility sanctions pursuant to § 9.109 of this part) has been committed.

(b) The contractor and the predecessor contractor shall cooperate in any investigation conducted pursuant to this subpart, and shall not interfere with the investigation or intimidate, blacklist, discharge, or in any other manner discriminate against any person because such person has cooperated in an investigation or proceeding under this subpart or has attempted to exercise any rights afforded under this part.

(c) Upon completion of the investigation, the Administrator shall issue a written determination of whether a violation has occurred which shall contain a statement of findings and conclusions. A determination that a violation occurred shall address appropriate relief and the issue of ineligibility sanctions where appropriate. Notice of the determination shall be given by certified mail to the complainant (if any) and his/her representatives (if any), and to the successor contractor and their representatives (if any).

(d) The Administrator may conduct a new investigation or issue a new determination if the Administrator concludes circumstances warrant, such as where the proceedings before an Administrative Law Judge reveal that there may have been violations with respect to other employees of the predecessor contractor, where imposition of ineligibility sanctions is appropriate, or where the contractor has failed to comply with an order of the Secretary.

§ 9.103 How are decisions of the Administrator appealed?

(a) Except as provided in paragraph (b) of this section, the determination of the Administrator shall advise the parties (ordinarily the complainant (if any), the successor contractor, and their representatives (if any)), that the notice of determination shall become the final order of the Secretary and shall not be appealable in any administrative or judicial proceeding unless, within 20 days of the date of the determination of the Administrator, the Chief Administrative Law Judge receives a request for a hearing. Any aggrieved party may file a request for a hearing. The request for a hearing shall be accompanied by a copy of the Administrator's determination and may be filed by U.S. mail, facsimile (FAX), telegram, hand delivery, or next-day delivery service. At the same time, a copy of any request for a hearing shall be sent to the complainant(s) or successor contractor, and their representatives, if any, as appropriate; the Administrator of the Wage and Hour Division; and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. The Administrator's failure or refusal to seek ineligibility sanctions shall not be appealable.

(b) If the Administrator concludes that no relevant facts are in dispute, the parties and their representatives, if any, will be so advised and will be further advised that the determination shall become the final order of the Secretary and shall not be appealable in any administrative or judicial proceeding unless, within 20 days of the date of the determination of the Administrator, a petition for review is filed with the Administrative Review Board pursuant to § 9.107 of this part. The determination will further advise that if an aggrieved party disagrees with the factual findings or believes there are relevant facts in dispute, the aggrieved party may advise the Administrator of the disputed facts and request a hearing by letter, which must be received within 20 days of the date of the determination. The Administrator will either refer the request for a hearing to the Chief Administrative Law Judge, or notify the parties and their representatives, if any, of the Administrator's determination that there is no relevant issue of fact and that a petition for review may be filed with the Administrative Review Board within 20 days of the date of the notice, in accordance with the procedures at § 9.107 of this part.

(c) If any party desires review of the determination of the Administrator, including judicial review, a request for an administrative law judge hearing (or petition for review by the Administrative Review Board) must first be filed in accordance with paragraph (a) (or (b)) of this section. If a timely request for hearing (or petition for review) is filed, the determination of the Administrator shall be inoperative unless and until the administrative law judge or the Administrative Review Board issues an order affirming the determination.

Administrative Law Judge Procedures

§ 9.104 How may cases be settled without formal hearing?

(a) In accordance with the Executive Order's directive to favor the resolution of disputes by efficient and informal alternative dispute resolution methods, the parties are encouraged to resolve disputes in accordance with the conciliation procedures set forth in

§§ 9.100 and 9.101 of this subpart, or, where such efforts have failed, to utilize settlement judges to mediate settlement negotiations pursuant to 29 CFR part 18, § 18.9. At any time after commencement of a proceeding, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding.

(b) A settlement judge may be appointed by the Chief Administrative Law Judge upon a request by a party or the presiding administrative law judge. The Chief Administrative Law Judge has sole discretion to decide whether to appoint a settlement judge, except that a settlement judge shall not be appointed when a party objects to referral of the matter to a settlement judge.

§ 9.105 What procedures are followed if a complaint cannot be resolved through conciliation or settlement agreement?

(a) If the case is not stayed to attempt settlement, the administrative law judge to whom the case is assigned shall within fifteen (15) calendar days following receipt of the request for hearing, notify the parties and their representatives, if any, of the day, time and place for hearing. The date of the hearing shall not be more than 60 days from the date of receipt of the request for hearing.

(b) The administrative law judge may, at the request of a party, or on his/her own motion, dismiss a challenge to a determination of the Administrator upon the failure of the party requesting a hearing or his/her representative to attend a hearing without good cause; or upon the failure of said party to comply with a lawful order of the administrative law judge.

(c) At the Administrator's discretion, the Administrator has the right to participate as a party or as *amicus curiae* at any time in the proceedings, including the right to petition for review of a decision of an administrative law judge in a case in which the Administrator has not previously participated. The Administrator shall participate as a party in any proceeding in which the Administrator's determination has sought imposition of ineligibility sanctions.

(d) Copies of the request for hearing and documents filed in all cases, whether or not the Administrator is participating in the proceeding, shall be sent to the Administrator, Wage and Hour Division, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(e) A Federal agency which is interested in a proceeding may participate as *amicus curiae* at any time in the proceedings, at the agency's discretion. At the request of a Federal agency which is interested in a proceeding, copies of all pleadings in a case shall be served on the Federal agency, whether or not the agency is participating in the proceeding.

(f)(1) The rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR part 18 shall be applicable to the proceedings provided by this section, except that the Rules of Evidence at 29 CFR part 18, subpart B shall not apply. Rules or principles designed to assure production of the most probative evidence available shall be applied. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

(2) To the extent the rules in 29 CFR part 18 are inconsistent with a rule of special application provided by these regulations or the Executive Order, these regulations and the Executive Order are controlling.

§ 9.106 What rules apply to the decision of the administrative law judge?

(a) The administrative law judge shall issue a decision within 60 days after completion of the proceeding at which evidence was submitted. The decision shall contain appropriate findings, conclusions, and an order and be served upon all parties to the proceeding.

(b) Upon the conclusion of the hearing and the issuance of a decision that a violation has occurred, the administrative law judge shall issue an order that the successor contractor take appropriate action to abate the violation, which may include hiring the affected employee(s) in the same or a substantially equivalent position(s) to that which the employee(s) held under the predecessor contract, together with compensation (including lost wages), terms, conditions, and privileges of that employment. Where ineligibility sanctions have been sought by the Administrator, the order shall also address whether such sanctions are appropriate.

(c) If an order is issued finding that the contractor violated the Executive Order and these regulations, the administrative law judge may assess a sum equal to the aggregate amount of all costs (not including attorney fees) and expenses reasonably incurred by the aggrieved employee(s) in the proceeding.

(d) A proceeding under subpart B of this part is not subject to the Equal Access to Justice Act, as amended, 5 U.S.C. 504. In such a proceeding, the administrative law judge shall have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

(e) The decision of the administrative law judge shall become the final order of the Secretary unless a petition for review is timely filed with the Administrative Review Board.

Appeal Procedures

§ 9.107 How may an administrative law judge's decision or the Administrator's determination be appealed?

(a) The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from determinations of the Administrator pursuant to § 9.103(b) of this part and from decisions of administrative law judges pursuant to § 9.106 of this part.

(b) Any aggrieved party desiring review of a decision of the administrative law judge (or of the Administrator, pursuant to § 9.103(b)) shall file a petition for review, in writing, with the Administrative Review Board. No administrative or judicial review shall be available unless a timely petition for review to the Administrative Review Board is first filed. To be effective, such a petition for review must be received within 20 days of the date of the decision of the administrative law judge (or Administrator), and shall be served on all parties and the Chief Administrative Law Judge (where the case involves an appeal from an administrative law judge's decision). If a timely petition for review is filed, the decision of the administrative law judge (or Administrator) shall be inoperative unless and until the Administrative Review Board issues an order affirming the decision or declining review of the matter. If a petition for review concerns only the imposition of ineligibility sanctions, however, the remainder of the decision shall be effective immediately.

(c)(1) A petition for review shall refer to the specific findings of fact, conclusions of law, or order at issue.

(2) Copies of the petition and all briefs shall be served on the Administrator, Wage and Hour Division, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(d) The Board's final decision shall be issued within 90 days of the receipt of the petition for review and shall be served upon all parties by mail to the last known address, and on the Chief

Administrative Law Judge (in cases involving an appeal from an administrative law judge's decision).

(e) If the Board concludes that the contractor has violated the Executive Order, the final order shall order action to abate the violation, which may include hiring the affected employee(s) in the same or a substantially equivalent position(s) to that which the employee(s) held under the predecessor contract, together with compensation (including lost wages), terms, conditions, and privileges of that employment. Where the Administrator has sought imposition of ineligibility sanctions, the Board shall also determine whether an order imposing ineligibility sanctions is appropriate.

(f) If a final order finding violations of the Executive Order is issued, the Board may assess against the successor contractor a sum equal to the aggregate amount of all costs (not including attorney fees) and expenses reasonably incurred by the employee(s) in the proceeding.

(g) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary and shall act fully and finally on behalf of the Secretary concerning such matters. The Board shall not have jurisdiction to pass on the validity of any provision of this part. The Board is an appellate body and shall decide cases properly before it on the basis of all relevant matter contained in the entire record before it. The Board shall not hear cases de novo or receive new evidence into the record.

(h) Proceedings under Executive Order 12933 are not subject to the Equal Access to Justice Act (Pub. L. 96–481). Accordingly, in any proceeding conducted pursuant to the provisions of §§ 9.105–9.107, the Administrative Review Board shall have no power or authority to award attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act.

Enforcement Remedies

§ 9.108 What are the consequences to a contractor of not complying with the Executive Order?

(a) The Executive Order provides that the Secretary shall have the authority to issue orders prescribing appropriate remedies, including, but not limited to, requiring employment of the predecessor contractor's employees and payment of wages lost.

(b) After an investigation and a determination by the Administrator that lost wages or other monetary relief is due, the Administrator may direct that so much of the accrued payments due on either the contract or any other contract between the contractor and the Government shall be withheld in a deposit fund as are necessary to pay the moneys due. Upon the final order of the Secretary that such moneys are due, the Administrator may direct that such withheld funds be transferred to the Department of Labor for disbursement.

(c) If the contracting officer or the Secretary finds that the predecessor contractor has failed to provide a list of the names of employees working under the contract in accordance with § 9.6(c), the contracting officer may take such action as may be necessary to cause the suspension of the payment of funds until such time as the list is provided to the contracting officer.

§ 9.109 Under what circumstances will ineligibility sanctions be imposed?

(a) Where the Secretary finds that a contractor has failed to comply with any order of the Secretary or has committed willful violations of the Executive Order or these regulations, the Secretary may order that the contractor and its responsible officers, and any firm in which the contractor has a substantial interest, shall be ineligible to be awarded any contract or subcontract of the United States for a period of three years.

(b) Upon order of the Secretary, the names of persons or firms found to be ineligible for contracts in accordance with this section shall be added to the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs,'' compiled, maintained and distributed by the General Services Administration in accordance with 48 CFR 9.404. No contract of the United States shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until three years have elapsed from the date the persons' or firms' name was entered on the electronic version of the list.

Subpart C—Definitions

§ 9.200 Definitions.

For purposes of this part:

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

Contract means any prime contract subject wholly or in part to the provisions of the Executive Order.

Contracting officer means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

Executive Order or *Order* means Executive Order 12933 (59 FR 53559, October 24, 1994).

Federal Government means an agency or instrumentality of the United States which enters into a contract pursuant to authority derived from the Constitution and the laws of the United States.

Secretary means the Secretary of Labor or his/her authorized representative.

Service employee means any person engaged in the performance of recurring building services other than a person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor and such person.

United States means the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations, all or substantially all of the stock of which is owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including non-appropriated fund instrumentalities.

Appendix to Part 9—Notice to Building Service Contract Employees

The contract for (type of service) services currently performed by (predecessor contractor) has been awarded to a new contractor. (successor contractor) will begin performance on (date successor contract begins) .

As a condition of the new contract(successor contractor) is required to offer employment to the employees of (predecessor contractor) working at (the contract worksite or worksites) except in the following situations:

- Managerial or supervisory employees on the current contract are not entitled to an offer of employment.
- (successor contractor) may reduce the size of the current work force. Therefore, only a portion of the existing work force may receive employment offers. However, (successor contractor) must offer employment to the employees of (predecessor contractor) if any vacancies occur in the first three months of the new contract.

(successor contractor) may employ a current employee on the new contract before offering employment to (predecessor contractor's) employees only if the current employee has worked for (successor contractor) for at least three months immediately preceding the commencement of the new contract and would face layoff or

discharge if not employed under the new contract.

- Where (successor contractor) has reason to believe, based on credible information from a knowledgeable source, that an employee's performance has been unsuitable on the current contract, the employee is not entitled to employment with the new contractor.
- If you are offered employment on the new contract, you will have at least ten (10) days to accept the offer.

Any employee of (predecessor contractor) who believes that he or she is entitled to an offer of employment with (successor contractor) and has not received an offer, may file a complaint with (contracting officer or representative), the contracting officer handling this contract at: (address and telephone number of contracting officer). If the contracting officer is unable to resolve the complaint, the contracting officer shall promptly forward a report to the U.S. Department of Labor, Wage and Hour Division.

If you have any questions about your right to employment on the new contract, contact: (Name, address, and telephone # for the contracting officer or the contracting officer's representative)

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Part VII

Department of Health and Human Services

Administration for Children and Families

Announcement of the Availability of Financial Assistance and Request for Applications to Support Demonstration Projects Under the Abandoned Infants Assistance Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. CB–97–05]

Announcement of the Availability of Financial Assistance and Request for Applications to Support Demonstration Projects under the Abandoned Infants Assistance Program

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Announcement of the availability of financial assistance and request for applications to support demonstration projects under the Abandoned Infants Assistance Act, as amended, Pub. L. 104–235.

SUMMARY: The Children's Bureau (CB) within the Administration on Children, Youth and Families, Administration for Children and Families announces the availability of fiscal year (FY) 1997 funds for competing new discretionary grants under the Abandoned Infants Assistance (AIA) Program. Funds from the AIA Program are designed to provide community-based, comprehensive services to abandoned infants and infants at risk of abandonment and their families; specifically young children and families who are affected by substance abuse and the human immunodeficiency virus (HIV).

This announcement contains forms and instructions for submitting an application.

CLOSING DATE: The closing date and time for Receipt of applications is 4:30 p.m. (Eastern Time Zone), on July 21, 1997. Applications received after 4:30 p.m. on that day will be classified as late. Postmarks and other similar documents DO NOT establish receipt of an application. Detailed application submission instructions including the addresses where applications must be received are found in Part III of this announcement.

DEADLINE: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447, Attention: Abandoned Infants Assistance Program (Specify Priority Area A, B, or C).

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours 8 a.m. and 4:30 p.m., at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). (Reference the Abandoned Infants Assistance Program and specify Priority Area A, B, or C.) Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its applicant will not be considered in the current competition.

Extension of deadlines: ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

FOR FURTHER INFORMATION CONTACT: The ACYF Operations Center, Technical Assistance Team (telephone number 1–800–351–2293) is available to answer questions regarding application requirements and to refer you to the appropriate contact person in ACYF for programmatic questions.

INTENT TO APPLY: If you are going to submit an application, send a postcard or call in the following information: The name, address and telephone number of the contact person; the name of the organization; and the priority area(s) in which you may submit an application within two weeks of the receipt of this announcement to: Administration on Children, Youth and Families, Operations Center, 3030 Clarendon Boulevard, Suite 240, Arlington, VA 22201. The telephone number is 1–800–351–2293. The information will be used to determine the number of expert reviewers needed and to update the mailing list of persons to whom the program announcement is sent.

SUPPLEMENTARY INFORMATION: This program announcement consists of five parts. Part I provides information on the Children's Bureau. Part II describes the review process, additional requirements for the grant applications, and the programmatic priorities for which applications are being requested. Part III provides information on the application requirements. Part IV describes the evaluation criteria. Part V provides the instructions for the development and submission of applications.

The forms to be used for submitting an application follow Part V. Please copy as single-sided forms and use in submitting an application under this announcement. No additional application materials are available or needed to submit an application.

Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds.

Outline of Announcement

Part I: General Information
- A. Background
- B. Statutory Authority Covered Under This Announcement

Part II: Review Process and Priority Areas
- A. Eligible Applicants
- B. Review Process and Funding Decisions
- C. Evaluation Process
- D. Structure of Priority Area Descriptions
- E. Available Funds
- F. Grantee Share of Project Costs
- G. Priority Areas and Descriptions
- H. Priority Descriptions

Part III: Application Requirements
- A. Objectives and Needs for Assistance
- B. Results and Benefits
- C. Approach
- For Priority Area A
- For Priority Area B
- For Priority Area C
- D. Staff Background and Organizational Experience
- E. Budget Appropriateness

Part IV. Evaluation Criteria

Part V. Instructions for the Development and Submission of Applications for FY 1997
- A. Availability of Forms
- B. Paperwork Reduction Act of 1995
- C. Required Notification of the State Single Point of Contact
- D. Deadline for Submission of Applications
- E. Instructions for Preparing the Application and Completing Application Forms
- 1. SF 424 Page 1, Application Cover Sheet
- 2. SF 424A-Budget Information-Non-Construction Programs
- 3. Project Summary Description
- 4. Program Narrative Statement
- 5. Organizational Capability Statement
- 6. Assurances/Certifications
- 7. Statutory Assurances

F. Checklist for a Complete Application

G. The Application Package

Part I. General Information

A. Background

The Administration on Children, Youth and Families administers

national programs for children and youth, works with States and local communities to develop services which support and strengthen family life, seeks joint ventures with the private sector to enhance the lives of children and their families, and provides information and other assistance to parents.

The concerns of ACYF extend to all children from birth through adolescence. Many of the programs administered by the agency focus on children from low-income families; children and youth in need of foster care, adoption or other child welfare services; preschool children; children with disabilities; abused and neglected children; runaway and homeless youth; and children from American Indian and migrant families.

Within ACYF, the Children's Bureau plans, manages, coordinates and supports child welfare services programs. It administers the Foster Care and Adoption Assistance Program, the Child Welfare Services State Grants Program, the Child Welfare Services Training Programs, the Independent Living Initiatives Program, the Adoption Opportunities Program, the Abandoned Infants Assistance Program, and the Family Preservation and Family Support program.

The Children's Bureau programs are designed to promote the welfare of all children, including disabled, homeless, dependent, abused or neglected children and their families. The programs aid in preventing and remedying the neglect, abuse and exploitation of children. The programs also encourage the strengthening of the family unit to help alleviate the unnecessary separation of children from their families and reunify families, where possible, when separation has occurred.

B. Statutory Authority Covered Under This Announcement

The Abandoned Infants Assistance Act of 1988 as amended by Pub. L. 104–235, 42 U.S.C. 670. CFDA: 93.551.

Part II. The Review Process and Priority Areas

A. Eligible Applicants

Each priority area description contains information about the types of agencies and organizations which are eligible to apply under that priority area. Because eligibility varies depending on statutory provisions, it is critical that the ''Eligible Applicants'' section of each priority area be reviewed carefully.

Before review, each application will be screened for applicant organization eligibility as specified under the selected priority area. Applications from ineligible organizations will not be considered or reviewed in the competition, and the applicants will be so informed.

Only agencies and organizations, not individuals, are eligible to apply under this Announcement. All applications developed jointly by more than one agency or organization, must identify only one lead organization and official applicant. Participating agencies and organizations can be included as co-participants, subgrantees or subcontractors. For-profit organizations are eligible to participate as subgrantees or subcontractors with eligible non-profit organizations under all priority areas.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code *or* by providing a copy of the current valid IRS tax exemption certification, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

B. Review Process and Funding Decisions

Timely applications received by the deadline date which are from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons outside the Federal government, will use the appropriate evaluation criteria listed later in this section to review and score the applications. The results of this review are a primary factor in making funding decisions.

The ACYF reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is in the best interest of the Federal government or the applicants. ACYF may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ACYF in making funding decisions.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ACYF also may take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Process

A panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. To facilitate this review, applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement. Applicants are encouraged to use job titles and not specific names in developing the application budget. However, the specific salary rates or amounts for staff positions identified must be included in the application budget.

The reviewers will determine the strengths and weaknesses of each application using the evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight.

D. Structure of Priority Area Descriptions

Each priority area description is composed of the following sections:

Eligible Applicants: This section specifies the type of organization eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.

Purpose: This section presents the basic focus and/or broad goal(s) of the priority area.

Background Information: This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACYF and/or others, and State models are noted, where applicable.

Application Requirements: (See Part III.) This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers in evaluating the applications against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.

Project Duration: This section specifies the maximum allowable length of time for the project period and refers to the amount of time approved for support, including any extensions.

Federal Share of Project Cost: This section specifies the maximum amount of Federal support for the project for the first budget year.

Matching Requirement: This section specifies the minimum non-Federal contribution, either through cash or in-kind match, required in relation to the maximum Federal funds requested for the project. Grantees must provide a share of the total approved project cost. For the Abandoned Infants Assistance Program, a grantee must propose at least a 10 percent match of the total approved project cost. The total approved project cost is the sum of the Federal and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet the match requirements through cash contributions. Therefore, an AIA project requesting $450,000 in Federal funds per budget period must include a match of at least $50,000 (10 percent of the total approved project cost per budget year).

Anticipated Number of Projects To Be Funded: This section specifies the number of projects that ACYF anticipates it will fund under the priority area.

Please note that applications that do not comply with the specific priority area requirements in the section on ''Eligible Applicants'' will not be reviewed. Applicants also should note that non-responsiveness to the section ''Minimum Requirements for the Project Design'' will result in a low evaluation score by the reviewers. Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description scores lower than one more clearly focused on, and directly responsive to, that specific priority area.

E. Available Funds

The ACYF intends to award new grants resulting from this announcement during the third and fourth quarter of fiscal year 1997, subject to the availability of funds. The size of the actual awards will vary.

Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term ''budget period'' refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term ''project period'' refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so. However, if the proposed match exceeds the minimum requirement, the grantee must meet its proposed level of match support before the end of the project period. Applicants should propose only that non-Federal share they can realistically provide since any unmatched Federal funds will be disallowed by ACF.

For multi-year projects, continued Federal funding beyond the first budget period is dependent upon satisfactory performance by the grantee, availability of funds from future appropriations and a determination that continued funding is in the best interest of the Government.

F. Grantee Share of Project Costs

Grantees must provide a share of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For the Abandoned Infants Assistance Program, a grantee must propose at least a 10 percent match of the total cost of the project. If approved for funding, grantee will be held accountable for commitments of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

G. Priority Areas and Descriptions

A—Previous Service Demonstration Projects

B—New Start Comprehensive Service Demonstration Projects

C—Family Support Services for Grandparents and Other Relatives Providing Caregiving for Children of Substance Abusing and HIV-Positive Women

H. Priority Descriptions

Abandoned Infants Assistance Program Service Demonstration Projects (Priority Areas A, B and C)

Availability and Allocation of Funds: Total combined funding for Priority Areas A, B and C for FY 1997 competitive grants under section 101 of the Act (42 U.S.C. 670 note), is approximately $4.6 million.

The Administration for Children and Families proposes to award three to six grants in each of Priority Areas A and B in varying amounts up to $450,000 per budget year and to award three projects in Priority Area C in varying amounts up to $100,000. Applications under this announcement will be considered for:

- Previous Service Demonstration Projects—to provide support for the comprehensive service programs initially funded in FY 1991 and 1993 by requiring documentation of continuing need for the project; to propose ways of improving service provision to meet the needs of abandoned infants and young children or those who are at risk of abandonment and their families; and to propose methods to continue the program evaluation, including proposed outcome measures, and summary evaluative data on the current program. Applicants applying under this priority area should be advised this is a competitive funding process and that applications approved for funding will be given a new grant number. Further, existing award activities cannot overlap with the new grant's project period; and finally, funds from the currently existing grants cannot be expended for new grant activities.
- New Start Service Demonstration Projects—to establish a comprehensive services program in jurisdictions not already served by the Abandoned Infants Assistance Program to meet the needs of abandoned infants and young children, or those who are at risk of abandonment and their families; and to conduct a formative evaluation for Years I and II; and to collect information on client outcomes in Years III and IV. Also, included in this Priority Area are agencies or organizations that have previously received funds under the Abandoned Infants Assistance Program but are not currently receiving AIA funds.
- Family Support Services for Grandparents and Other Relatives Providing Caregiving for Children and Substance Abusing and HIV-Positive Women—to provide counseling and other support services to family caregivers for drug-exposed, HIV-

exposed, HIV positive or HIV/AIDS affected children.

All applicants funded under Priority Areas A, B or C will be required to provide information for special studies or evaluations funded by the Administration on Children, Youth and Families.

All applicants funded under this announcement will be required to have a key person from the project staff and the evaluator attend a grantees' meeting held annually in Washington, D.C.

All applicants who are funded under this announcement and who are operating a transitional residence for infants or young children are required to submit a copy of the license approving the agency to operate a residence for infants and/or young children. If a copy of the license is not submitted, the application will not be considered for review. The applicant must assure that the license is appropriate for the level of care and the number of infants/young children to be housed in the residence.

The training and technical assistance services of the National Abandoned Infants Assistance Resource Center are available to all applicants funded under this announcement.

All applicants are also required to provide assurances that they will comply with fiscal and program reporting requirements. These required assurances are listed later in this program announcement.

The agency receiving the grant must assume fiscal and administrative responsibilities for the use of grant funds. The role of cooperating agencies must be explicit and supported by letters of specified commitment to the project. Prescribed support letters will not be considered responsive. Also, each application must include as a specific goal the development of strategies to coordinate and make optimal use of all relevant private, Federal, State and local resources to establish and maintain services beyond the life of the grant.

Background Information

Public Law (Pub. L.) 104–235, The Child Abuse Prevention and Treatment Act Amendments of 1996, amended Pub. L. 100–505, the Abandoned Infants Act of 1988 and was signed into law October 3, 1996. The purposes of the Public Law 100–505, as amended, are to establish a program of demonstration projects to prevent the abandonment in hospitals of infants and young children, particularly those who have been perinatally exposed to a dangerous drug and those with the human immunodeficiency virus (HIV) or who have been perinatally exposed to the virus; to identify and address the needs of those infants and children who are, or might be, abandoned; to develop a program of comprehensive services for these children and members of the biological family (see Definitions) for any condition that increases the probability of abandonment of an infant or young child, including, but not limited to, foster family care services, case management services, family support services, parenting skills, in-home support services, respite and crisis intervention services, counseling services and group residential home services; and to recruit and train health and social services personnel, foster care families, and residential care providers to meet the needs of abandoned children and infants and children who are at risk of abandonment. The legislation also allows for the provision of technical assistance and training programs to support the planning, development and operation of the service demonstration projects. The reauthorized legislation (Section 101 (h) of Pub. L. 104–235) mandates that the Secretary shall give priority to applicants located in States that have developed and implemented procedures for expedited termination of parental rights and placement for adoption of infants determined to be abandoned under State law.

Definitions: The enabling legislation provides definitions for three terms, i.e., ''abandoned infants and young children,'' ''dangerous drug,'' and ''natural family.'' The term ''abandoned infants and young children'' means infants and young children who are medically cleared for discharge from acute-care hospital settings, but who remain hospitalized because of a lack of appropriate out-of-hospital placement alternatives. The term ''dangerous drug'' means a controlled substance as defined in section 102 of the Controlled Substances Act. Although the term ''natural family'' is used in the legislation, the Administration on Children, Youth and Families prefers the term biological family. Therefore, the term biological parents, family, mother or father will be used for the remainder of the grant announcement. The term biological family shall be broadly interpreted to include biological parents, grandparents, family members, guardians, children residing in the household and individuals residing in the household on a continuing basis who are in a caregiving situation with respect to infants and young children covered under this Act. (42 U.S.C. 670 note, title I, section 103.)

Statement of the Problem

Concern continues to grow about the numbers of infants and young children infected with HIV/AIDS and/or exposed to drugs during prenatal development. Also, there is concern about an increase in the number of women who are using illegal drugs during pregnancy with possible adverse consequences for their children.

In recent years, the link between female intravenous drug users, the HIV perinatal transmission rate and the subsequent development of the acquired immune deficiency syndrome (AIDS) in young children has presented an enormous challenge to pediatric health care workers. According to the most recent Centers for Disease Control and Prevention (CDC) data, there are 7,298 AIDS-infected children under 13 years of age. That is almost 700 more than the previous year and the number has more than doubled since 1992 and the problem is expected to grow.

In 1996, 712 new cases of pediatric AIDS were reported. While 73% of AIDS cases among children have been reported from a relatively small number of States and territories—New York, Florida, New Jersey, Pennsylvania, Texas, California, Maryland and Puerto Rico—HIV infection affects children in nearly all parts of the country. Cases of pediatric AIDS have been reported from 48 States the District of Columbia, Puerto Rico and the Virgin Islands. (CDC HIV/AIDS Surveillance Report, June, 1996; AIA Factsheet, January, 1996).

Women are the fastest growing population in the AIDS epidemic. In 1992, AIDS was the fourth leading cause of death for women of child-bearing age, 25–44 years, up from fifth in 1990 and eighth in 1987. Major studies of congenital HIV infection indicate that perinatal transmission rates range between 14 and 40 percent. While new treatments have improved the likelihood of children being born without the virus, an unfortunate consequence of this is that more children born to HIV/AIDS infected women will be orphaned. This potential increase of orphaned children will have an impact on the child welfare services system. (AIA Factsheet, 1996).

The problem of AIDS is closely connected with perinatal substance abuse. Fetal exposure to HIV/AIDS is linked to maternal drug use. Mothers are most commonly infected with HIV through their own drug use or sexual relations with an IV drug user. The National Pregnancy and Health Survey (National Institute on Drug Abuse) reported that approximately six percent

of the four million women who gave birth in 1992 used illicit drugs, 19 percent drank alcohol and 20 percent smoked cigarettes during pregnancy. About one-third of the illicit drug users also smoked and/or drank alcohol during pregnancy.

The risk factors for women delivering a drug-exposed infant include poverty, little education, poor nutrition, little or no prenatal care, a history of sexual and/or physical abuse and being over 25, unmarried, uninsured, on Medicaid and having other children. Similar characteristics exist for women at risk of AIDS/HIV. They are economically and socially disadvantaged; are primarily women of color; lack access to adequate medical care; use drugs, alcohol and tobacco; and are at risk for sexually transmitted diseases. Many of these women are not even aware they are infected with HIV until they give birth and their babies test positive. (AIA Factsheet, 1996)

The characteristics of women who abandon or who are at risk of abandoning their children are similar. These women are often struggling with: Poverty, homelessness, physically, sexually and emotionally disruptive relationships; HIV infection; mental illness and drug addiction. Researchers have reported that the average age of these mothers is 27 years old; the average number of pregnancies is four; 64 percent of the mothers receive no prenatal care; and 27 percent are incarcerated during their pregnancies. Many mothers have other children in out-of-home care; have very little, if any, social supports; delivered their newborns alone; and are homeless. Additionally 45 percent of the mothers have not graduated from high school; 62 percent receive income assistance; and 80 percent use multiple drugs. (Barth et al., 1996)

HIV infection is relatively prevalent in the abandoned infants population. As many as eight percent of infants abandoned in hospitals are reported to be HIV infected as compared with approximately .04 percent of all infants in the United States who are infected each year. Due to inconsistent testing and confidentiality laws, this number may underestimate the magnitude of the problem. (James Bell Associates, 1993)

Maternal substance abuse has also been indicated as a significant factor in cases of infants abandoned in hospitals. Approximately 80 percent of these babies are prenatally exposed to illicit drugs as compared with between five and approximately 11 percent of all babies born in the United States. About one-third of the illicit drug users smoked tobacco and/or drank alcohol during pregnancy. (James Bell Associates, 1993)

Children who are HIV positive or have AIDS are frequently ill and require intensive and specialized care. The delivery of services to these children is often complicated because the children and their families live in communities that lack the necessary resources or because caregivers have difficulty accessing needed services. (Barth *et al.*, 1996) Further complicating the situation is the fact that all of these children have mothers who are HIV positive, and most of the mothers are drug-abusers who themselves need medical, social and other supportive services. Returning care to the mother may not be an option, since the mother may be too ill herself to care for the child.

The children living with an HIV/AIDS infected parent in many ways require as complex a range of services as the infected individual. To date, little attention has been focused on this issue. According to the best estimates provided by researchers thus far, the number of such children at risk of being orphaned by the AIDS/HIV epidemic may reach anywhere from 80,000–125,000 by the year 2000. (Levine, 1992) It is vital that communities, in general, and child welfare agencies, in particular, begin to address the issues of permanency planning for this vulnerable population. The magnitude of the problem and the need for appropriate planning and services to address this need have only recently been understood. Due to the episodic nature of the disease, parents and primary caregivers will experience a direct impact on the continuity of care that they must provide for their children. The children who will be or are orphaned by AIDS/HIV need social services, psychological and emotional support, medical care and the stability of a permanent home/caregiver. (Polineni, 1995)

Although many of these services still need to be developed in communities, some States have taken steps to address permanency for these children. Several States have enacted Standby Guardianship Laws to allow parents to provide for the provisional care of their child and address the needs of both the child and the family. The laws are designed to be flexible to meet the parents' needs and may be implemented at any designated time including a period of illness, hospitalization or death. Ways to provide needed services and to eliminate the barriers to implementing permanency for this population need to be continually explored. (Polineni, 1995)

Some children exposed to drugs, and those who acquire AIDS, pose challenging medical and behavioral problems. Their neurological deficits and developmental delays can prove very trying for caregivers. Biological and foster parents, relatives, adoptive parents and other caretakers often need special training and supportive services to help them meet the children's needs as well as respite services for themselves.

Achieving permanency for such children is typically slow and complex. Some parents may be motivated to keep their child, but not to change their own behaviors; other parents may be motivated to change their behaviors, but are incapable of accessing the appropriate services on their own or of maintaining improved behaviors in their current environment. The assistance required to address the service needs of the parent may be fragmented among many different agencies. Some, such as drug treatment, may not be readily available for pregnant women. Some services may not be culturally sensitive, and others may not be entirely appropriate to the client's needs.

If permanency is to be achieved early in the life of the developing child, intensive efforts must be made with the family to determine its suitability to care for the child. If that is not possible, steps must be taken toward constructive long-term solutions to provide permanency for the child. Toward these ends, systematic action must be taken to obtain and deliver a comprehensive set of services to the biological and/or foster or adoptive family and the child.

A number of discretionary programs within ACYF and throughout the Department of Health and Human Services fund projects which are related to the issues addressed by this announcement. Prospective applicants for Priority Areas A and B must, if applicable, work with existing programs in the community that serve pregnant women or community programs that serve substance-abusing women and women with HIV/AIDS. The applicant should include a description of its networking activities to demonstrate how these programs are involved in service delivery.

Emphasis on Coordination

All New Start Service Demonstration Project applicants should utilize an existing consortium or develop a consortium or other coordinating entity for the purpose of carrying out the project funded under this announcement. The consortium may include public health, child welfare, substance abuse treatment and other

relevant human services agencies. To the extent possible, applicants are encouraged to formalize working relationships with the police and courts; mental health, developmental disabilities, Head Start, and special education providers, community-based maternal and child health programs; and community parent education and parent support programs, including in-home visiting, respite care and housing assistance in the community. Plans for coordinating joint medical-social service case management, outstationing child welfare staff at hospitals where large numbers of at-risk infants are being delivered, or other methods to be used to bring about comprehensive service delivery should be described in the application and supported by documentation.

All currently funded grantees seeking new grant funding should continue to use their existing consortia. These grantees shall: (1) Describe ways in which the consortium can be expanded, if possible, or changed, if necessary; and (2) demonstrate how the consortium has improved communication and working relationships between and among community agencies in coordinating services for this target population.

A. Previous Service Demonstration Projects

Eligible Applicants: The eight service demonstration projects initially funded in FY 1991 under section 101, Pub. L. 100–505 and four service demonstrations projects initially funded in FY 1993 under Pub. L. 102–236 are eligible for new grants under this priority area. Applicants must show progress and accomplishments to date on the original goals and objectives of their current grant. Inclusion of this information will be evaluated in the Approach Criterion.

Application Requirements: See Part III.

Project Duration: The length of the renewal project period for the competing service demonstration grantees may not exceed 48 months.

Federal Share of Project Costs: Grant amounts will vary and range up to $450,000 for each of four years. The dollar amount requested must be fully justified and documented. The justification can include various community-specific factors related to substance abuse and perinatal exposure to drugs or HIV. For example, the applicant might include information on the rate of illegal drug use by women of child-bearing age; the rate of HIV positive women giving birth; the number of known drug users; the rate or number of infants who have a positive toxicology screen. The size of a prior grant award is not, in and of itself, adequate justification to request the same amount under this announcement.

Applicants under this priority areas must commit no less that 10% of the total approved project cost for the evaluation component. For example, a $450,000 grant award with a $50,000 match should commit no less than $50,000 annually to the evaluation effort or a total of no less than $200,000 during the entire project period.

Matching Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting a total of $1,800,000 in Federal funds for all four project years (based on an award of $450,000 per budget year), must include a match of at least $200,000 (10 percent of total approved project costs, i.e., $50,000 per budget period).

Anticipated Number of Projects to be Funded: It is anticipated that three to five projects will be funded under this priority area.

Length of Proposal: The length of the proposal is limited to 75 pages, including all preprinted pages, and budget narrative, but exclusive of appendices.

B. New Start Comprehensive Service Demonstration Projects

Eligible Applicants: Any State, local public or nonprofit agency or organization including accredited colleges and universities.

Applicants in jurisdictions in which there currently does not exist a program funded under the Abandoned Infants Assistance Program will be considered under this priority area. Agencies and organizations that have previously received funding under the AIA Program but are not currently grantees may submit a proposal under this Priority Area.

Applicants from localities in which projects are currently operating (see Appendix C) will not be considered as the purpose of this priority area is to establish comprehensive service projects in new localities. Exceptions to this may be considered for large metropolitan areas, that is, cities with a population over 1,000,000.

Application Requirements: See Part III.

Project Duration: The project period may not exceed 48 months.

Federal Share of Project Costs: The maximum Federal share is $450,000 per budget year. However, applicants are strongly encouraged to construct the budget request judiciously. Factors to be considered include the population of the area to be served; the extent of maternal substance abuse in the target area; the number of drug-exposed infants; the number of women with AIDS or women who are HIV positive in the target area; the number of reports/referrals to social service agencies of babies born with illegal substances in their system. For example, a city which currently receives a $450,000 grant per budget year under this legislation has the following profile: A population of 2–3 million; 20 percent of newborns have been prenatally exposed to drugs; 2,000 reported allegations of child maltreatment involving infants in substance-abusing families are received annually; approximately 350–375 women with AIDS living in the jurisdiction; an estimated 2,500–3,000 HIV positive women and between 700–800 HIV positive children; and an annual projected number of 500 children born who are HIV-positive. Each applicant should compare statistics from its area to the example city and develop its budget request accordingly. This profile does not necessarily exclude an application from a jurisdiction of smaller size receiving the maximum Federal amount. However, an applicant from a smaller-sized jurisdiction must provide adequate justification that the community's experience with drug exposed and/or HIV-positive infants is severe enough to warrant the maximum Federal amount.

Applicants under this priority area must commit no less than five percent of the total project cost for the evaluation component. For example, a $450,000 grant award with a $50,000 match should commit no less than $25,000 annually to the evaluation effort or no less than a total of $100,000 during the project period. Applicants are encouraged to increase the financial commitment to evaluation in Year III and IV.

Matching Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting a total of $1,800,000 in Federal funds for all four project years (based on an award of $450,000 per

budget year), must include a match of at least $200,000 (10 percent of total approved project costs, i.e., $50,000 per budget period).

Anticipated Number of Projects to be Funded: It is anticipated that three to five projects will be funded.

Length of Proposal: The length of the proposal is limited to 75 pages, including all preprinted pages, and budget narrative, but exclusive of appendices.

C. Family Support Services for Grandparents and Other Relatives Providing Caregiving for Children and Substance Abusing and HIV-Positive Women

Eligible Applicants: Public agencies and private, non-profit organizations and institutions of higher education are eligible to apply. Applicants must demonstrate an understanding of family caregiver support and service needs and be able to demonstrate a history of involvement with grandparent groups or other family member caregiver groups which specifically address the needs of drug-exposed and/or HIV-positive children.

Background: As an increasing number of HIV-positive and/or substance abusing parents become unable to provide adequate care for their infants and young children, family members, frequently grandparents, assume the responsibility as the primary caretaker for the children. Social service agencies report that an increasing number of families include a grandparent raising a grandchild, a circumstance which is due primarily to parental drug addiction.

Many of the children born to drug-abusing, HIV-positive or AIDS infected women suffer medical or behavioral problems as a result of their mother's addiction or health status. They may be hyperactive and have severe or chronic health problems and developmental and neurological delays. These children may be more difficult to parent in many ways that family members, particularly grandparents who are dealing with their own aging or health issues, may not be adequately prepared to handle.

In addition to parenting issues, families must also deal with financial support and custody issues. Family members frequently are outside the public child welfare system and receive little, if any, financial assistance. If assistance is available, it is generally at a rate lower than the foster care rates. Many caretakers receive no financial assistance at all.

The familial caretakers may need education in how to deal with children who have been exposed pre-natally to a dangerous drug or who may be HIV-positive or HIV/AIDS affected; assistance in gaining access to community resources; and for themselves, support services to cope with the responsibilities of rearing children at an older age. The caregivers need training in what to expect of these children; how to nurture and care for them; and how to access other supportive services, including respite care. Family caregivers may also need some education to deal with the addictive behaviors of the child's parent(s). In addition, if the parent is HIV-positive, the caregivers will need support in dealing with the illness and eventual death of the child's parent.

The purpose of this priority area is to provide funds to any group or organization that has experience in providing counseling and other support services to family caregivers for drug-exposed, HIV-positive or HIV/AIDS affected children. The funds will be used to establish or enhance a system of support services that should include, but not be limited to, social services, counseling, legal and financial services and assistance with custodial issues.

Application Requirements: See Part III.

Project Duration: The length of the project period for grantees may not exceed 48 months.

Federal Share of Project Costs: Grant amounts will not exceed $100,000 for each of four years. The dollar amount requested must be fully justified and documented. The justification can include various community-specific factors related to substance abuse and perinatal exposure to drugs or HIV. For example, the applicant might include information on the rate of illegal drug use by women of child-bearing age; the rate of HIV positive women giving birth; the number of known drug users; the rate or number of infants who have a positive toxicology screen; the percentage of individuals caring for the children of substance-abusing or HIV-positive family members.

Applicants must commit no less than 5% of the total approved project cost for the evaluation component. For example, a $100,000 grant award with a $11,111 match should commit no less than $5,556 annually to the evaluation effort or a total of no less than $22,222 during the entire project period.

Matching Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting a total of $400,000 in Federal funds for all four project years (based on an award of $100,000 per budget year), must include a match of at least $44,444 (10 percent of total approved project costs, i.e., $11,111 per budget period).

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded.

Length of Proposal: The length of the proposal is limited to 60 pages, including all preprinted pages, and budget narrative, but exclusive of appendices.

Part III. Application Requirements

Applicants are required to use the Standard Forms, Certifications, Disclosures and Assurances provided under Appendix A. Applications submitted for funding under this announcement are considered New Applications; and, therefore, applicants should follow instructions for New Applications.

New applications must respond to the instructions under Program Narrative, Item A—Project Description—Components, and Item D—Budget and Budget Justification. In preparing the program narrative statement, the applicant should provide the information that the panel will use to evaluate and rank the proposal. The information should be concise and complete when addressing the activities for which Federal funds are being requested. Supporting documents should be included in order to present the information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience and other information considered to be relevant.

Under Item A—Project Description—component, the applicant must address the specific information requested under each priority area in this program announcement. The information addressing the following sections should either not require a response or should be located under a different section than prescribed.

Section A.1—Project Summary/Abstract—This should be a one page or less summary of the project and placed directly after the table of contents. This page will not count against the page limitation.

Section A.5—Evaluation—Provide a narrative that describes a way to evaluate (1) the results of the proposed project; and (2) the process outcomes of the project. State how the evaluation process will determine the extent to which the program has achieved the stated objectives and the extent to

which the accomplishment of the objectives can be attributed to the program. Discuss the criteria to be used to evaluate the results; explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. Keep in mind the suggested data collection instruments mentioned in the priority areas. Define the procedures you will employ to determine whether the program is being conducted in a manner consistent with the work plan and discuss the impact of the program effectiveness.

Section A.6—Geographic Location—should be addressed under the Objectives and Needs for Assistance

Section A.7—Additional Information—should be addressed under the Staff Background and Organizational Experience. Letters of support should be included in the appendices.

Section B.—Non-Competing Continuation applications—Does not apply to this announcement.

Section C.—Supplemental Requests—Does not apply to this announcement.

Section D.—Budget and Budget Justification—Provide a line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness and allocability of the proposed costs.

Applicants must address the following requirements in their application to be considered responsive to the **Federal Register** announcement. These requirements have been organized according to the evaluation criteria presented in Part III.

A. Objectives and Need for Assistance

1. State the objectives for the program and indicate how these objectives relate to the community issues to be addressed and demonstrate that there is a need for the program and is based on an assessment of community needs. Provide letters of support for your program from community-based agencies.

2. Identify the population to be served by the project and describe the needs of the target population. Provide an estimated number of infants and families the project will serve.

3. Identify the geographic location to be served by the project. Describe the key socioeconomic and demographic characteristics of the targeted community as it relates to women of child-bearing age and women and families who are affected by substance-abuse and HIV/AIDS and their needs. Describe the current availability of needed services that serve substance-abusing and/or AIDS/HIV-infected women and their families in the community.

B. Results or Benefits

1. Identify the specific results or benefits that can be expected for substance-abusing women and/or women with HIV/AIDS and their families. Identify specific community-wide results, if any.

2. Identify the kinds of qualitative and quantitative data the program will collect to measure progress towards the stated results or benefits. In discussing the evaluation, state the methods/procedures used to determine the extent to which the program has achieved the stated objectives.

3. Provide assurances that the program will collect data on individuals and families served; types of services provided; service utilization information; types and nature of needs identified and met and any other such information as may be required by ACYF.

4. Describe how the program results will benefit national policy and practice and ways in which it could lead to additional research in this field.

C. Approach

For Priority Area A

Applications submitted under this priority area are to include approaches/strategies to organize, make accessible and implement a comprehensive range of services for substance-abusing women and women with HIV/AIDS and their families. The proposed range of services should include discussions of any enhanced services based on prior years experience in conducting a service program. They must:

1. Describe how your project will accomplish the following set of legislative purposes:

- To prevent the abandonment of infants and young children, including the provision of services to members of the biological family to address any condition that increases the probability of abandonment of an infant or young child;
- To prevent the subsequent abandonment of infants and young children when they return to their homes;
- To assist abandoned infants and young children to reside with their biological families, relatives or foster and adoptive families, as appropriate, and to include the provision of respite care as needed. Short-term, transitional residential care services for small groups of infants or young children may be provided. For these services, however, it must be shown that the placements are necessary because, for example, a sufficient number of families cannot be recruited and trained to provide foster family care for abandoned infants and young children in the community or that such placements are in the best interests of the child. Proposals including residential care services will be considered only if that component is part of and integral to a larger system of services directed toward achieving permanency for the children; and only if the residential services are designed to be transitional (i.e., three to six months and no longer) to a permanent placement. The proposal may not include the costs of construction or other major structural changes for facilities. (Minor structural changes may be considered and approved by the Project Officer and Grants Management Office.)

2. Include an outcome analysis of prior evaluation(s).

3. Describe any revision or expansions of project goals and objectives based on a review of the development and implementation of the program. The review should include an assessment of the effectiveness of the approaches and intervention strategies initially proposed. If revised approaches were used, they should also be assessed for their effectiveness. This process should also include an assessment of problems in program implementation and a discussion of the proposed improved strategies to address those barriers.

4. In developing a broad and comprehensive approach, describe ways in which the project will provide the wide range of assistance needed by the target population that could include parenting skills; supportive, therapeutic services; housing and transportation; health care and drug and alcohol treatment; as well as, ways of addressing the specialized health care and therapeutic intervention for infants exposed to drugs and AIDS/HIV to assist them in their physical and cognitive development.

5. Describe ways the project will provide a program of service delivery that provides health, education and social services at a single site, as required by section 101(a)(8) of Pub. L.

100–505, as amended. If not, provide an explanation how these services will be readily accessible to the client families.

6. Describe ways in which following suggested strategies could be used in the proposed program implementation. These strategies and approaches are based on several years of experience in implementing services programs targeted for families at risk of abandonment and can be considered successful in working with the target population. They include:

• *Interagency Collaboration*—Services to the target population need to be comprehensive and seamless and require more resources than any single agency can provide. Interagency collaboration coordinates service development and funding between multiple agencies serving the same population.

• *Intervention Teams*—These teams bring together professionals from a variety of disciplines in the planning and delivery of services. An interdisciplinary team provides a variety of service perspectives and a more holistic assessment of needs and a more complete treatment plan.

• *Peer Services*—Peer staff have backgrounds and experiences similar to the clients and serve as a bridge between the client and professional worlds. Peer staff are more accessible and less threatening to the clients and can establish more trusting and more supportive relationships.

• *Home-Based Services*—Educational, supportive and therapeutic services are provided in the client's home and can improve client assessment and service provision by giving a fuller understanding of the client's circumstances. Further, lack of transportation and child care create serious barriers to agency-based services.

• *Culturally Appropriate and Women-focused Services*—This emphasis enables the services to be provided in an environment that acknowledges, reflects and respects the cultural and ethnic influences of the client population and recognizes the needs that particularly affect women.

• *Coordinated Medical and Social Service Case Management*—These case management services aid in the timely discharge of infants and reduce medically unnecessary hospital days and expedite hospital discharges to the most family-like settings.

• *Legal, Policy and Program Development*—These services provide permanency for HIV-affected children and help keep children orphaned by AIDS from entering the child welfare system.

7. Describe ways in which these additional suggested strategies/approaches regarding family mediation and voluntary relinquishment can be used. These techniques are useful in establishing permanency for children after it has been decided that targeted infants and children cannot return home. They are:

• *Family Mediation*—This is a voluntary, non-coercive negotiation process facilitated by a neutral, third-party. The goal of mediation is to encourage birth parent(s), extended relatives and foster/adoptive parents to cooperate in making decisions that reflect the best interests of the child. Mediation empowers the biological parent(s) and recognizes the need for a child to maintain family ties.

• *Relinquishment*—This is a voluntary process of transferring parental rights to an authorized child welfare agency and is usually a front-end approach that occurs prior to court involvement.

8. Include an assurance of a third party evaluation of the project. In order to evaluate the competence of the third-party evaluator and to assure that the evaluation methodology and design are appropriate, the third party evaluator must write the evaluation section of the application. This means that the evaluator must be selected as soon as possible after an applicant has decided to compete for a demonstration project. In selecting an evaluator, applicants are reminded that it is a regulatory requirement to encourage maximum free and open competition, using the applicant's own procurement policies and procedures. The application must indicate whether the third party evaluator was competitively selected, or whether the applicant is proposing a sole source contract for the evaluator. Sole source procurements must be fully justified in the application. For those applicants who plan to continue the services of their current third party evaluator, the applicant must include in the application a sole source justification for review, by the program office and the Division of Discretionary Grants, ACF.

9. Describe the methods of collecting descriptive data on the characteristics of the clients served and the services provided; and measures of client outcomes. In developing the evaluation component, applicants are required to collect outcome data on the following:

• Substance abuse treatment and recovery;

• Target infant/child characteristics, including gestational age, birth weight, HIV status at birth/15 months, drug screen results;

• Target infant/child placement status—at program intake, 12 months after enrollment in the program and at termination;

• Client termination—child placement status at 12 months after leaving the program.

• Family stability/permanency—e.g., hospitalized, home with biological parent, pre-adoptive, adoptive home, home with relatives, formal kinship foster care, or foster care home at intake, every six months enrolled, at termination and at six months post-termination.

10. Describe ways to collect data on the additional required following outcomes using suggested data collection instruments indicated:

• Child development and well-being at program intake and 12 months after enrollment. Data should also be collected on child injuries, hospitalizations or death following case openings. Suggested instruments include: Bayley Scale of Infant Development; Brazelton Neonatal Behavioral Assessment Scale; Denver Developmental Screening Test; Infant Behavior Questionnaire; and Child Well-Being Scales.

• Client satisfaction at three, six, twelve months and termination. Suggested instruments include: Client Feedback and Customer Satisfaction Survey.

11. Describe ways to collect the data on the following suggested but not required elements. Suggested data collection instruments are also included:

• Parenting skills—Suggested instruments: Parental Outcomes Interview; Knowledge of Child Development Questionnaire;

• Parent (caregiver) child interaction—Suggested instruments: Parental Outcomes Involvement Scale; Parent-Child Early Relational Assessment; and

• Cost Benefit—Discussion of a how the project reduces the financial burden on community services, e.g., reduction in the number of days of hospitalization.

12. Provide an assurance that the applicants will submit descriptive data on the clients served and the services provided annually to the National Abandoned Infants Assistance Resource Center. Timeframes for the submission of data on outcome measures will be negotiated within six months after grant award.

13. Provide an assurance that grantee staff will attend the required grantees' meeting held annually. At a minimum, a key staff person from the project and the evaluator will attend the annual 2–3 day grantees' meeting in Washington,

D.C. The applicant is further required to participate in any evaluation effort supported by ACYF.

For Priority Area B

Applications submitted under this priority area are to include approaches/strategies to organize, make accessible and implement a comprehensive range of services for substance-abusing women and women with HIV/AIDS and their families. They must:

1. Describe how your project will accomplish the following set of legislative purposes:

• To prevent the abandonment of infants and young children, including the provision of services to members of the biological family to address any condition that increases the probability of abandonment of an infant or young child;

• To prevent the subsequent abandonment of infants and young children when they return to their homes;

• To assist abandoned infants and young children to reside with their biological families, relatives or foster and adoptive families, as appropriate, and to include the provision of respite care as needed. Short-term, transitional residential care services for small groups of infants or young children may be provided. For these services, however, it must be shown that the placements are necessary because, for example, a sufficient number of families cannot be recruited and trained to provide foster family care for abandoned infants and young children in the community or that such placements are in the best interests of the child. Proposals including residential care services will be considered only if that component is part of and integral to a larger system of services directed toward achieving permanency for the children; and only if the residential services are designed to be transitional (i.e., three to six months and no longer) to a permanent placement. The proposal may not include the costs of construction or other major structural changes for facilities. (Minor structural changes may be considered and approved by the Project Officer and Grants Management Office.)

2. In developing a broad and comprehensive approach, describe ways in which the project will provide the wide range of assistance needed by the target population that could include parenting skills; supportive, therapeutic services; housing and transportation; health care and drug and alcohol treatment; as well as, ways of addressing the specialized health care and therapeutic intervention for infants exposed to drugs and AIDS/HIV to assist them in their physical and cognitive development.

3. Describe ways the project will provide a program of service delivery that provides health, education and social services at a single site, as required by section 101(a)(8) of Pub. L. 100–505, as amended. If not, provide an explanation how these services will be readily accessible to the client families.

4. Describe ways in which following suggested strategies could be used in the proposed program implementation. These strategies and approaches are based on several years of experience in implementing services programs targeted for families at risk of abandonment and can be considered successful in working with the target population. They include:

• *Interagency Collaboration*—Services to the target population need to be comprehensive and seamless and require more resources than any single agency can provide. Interagency collaboration coordinates service development and funding between multiple agencies serving the same population.

• *Intervention Teams*—These teams bring together professionals from a variety of disciplines in the planning and delivery of services. An interdisciplinary team provides a variety of service perspectives and a more holistic assessment of needs and a more complete treatment plan.

• *Peer Services*—Peer staff have backgrounds and experiences similar to the clients and serve as a bridge between the client and professional worlds. Peer staff are more accessible and less threatening to the clients and can establish more trusting and more supportive relationships.

• *Home-Based Services*—Educational, supportive and therapeutic services are provided in the client's home and can improve client assessment and service provision by giving a fuller understanding of the client's circumstances. Further, lack of transportation and child care create serious barriers to agency-based services.

• *Culturally Appropriate and Women-focused Services*—This emphasis enables the services to be provided in an environment that acknowledges, reflects and respects the cultural and ethnic influences of the client population and recognizes the needs that particularly affect women.

• *Coordinated Medical and Social Service Case Management*—These case management services aid in the timely discharge of infants and reduce medically unnecessary hospital days and expedite hospital discharges to the most family-like settings.

• *Legal, Policy and Program Development*—These services provide permanency for HIV-affected children and help keep children orphaned by AIDS from entering the child welfare system.

5. Describe ways in which these additional suggested strategies/approaches regarding family mediation and voluntary relinquishment can be used. These techniques are useful in establishing permanency for children after it has been decided that targeted infants and children cannot return home. They are:

• *Family Mediation*—This is a voluntary, non-coercive negotiation process facilitated by a neutral, third-party. The goal of mediation is to encourage birth parent(s), extended relatives and foster/adoptive parents to cooperate in making decisions that reflect the best interests of the child. Mediation empowers the biological parent(s) and recognizes the need for a child to maintain family ties.

• *Relinquishment*—This is a voluntary process of transferring parental rights to an authorized child welfare agency and is usually a front-end approach that occurs prior to court involvement.

6. Include an assurance of a third party evaluation of the project. In order to evaluate the competence of the third-party evaluator and to assure that the evaluation methodology and design are appropriate, the third party evaluator must write the evaluation section of the application. This means that the evaluator must be selected as soon as possible after an applicant has decided to compete for a demonstration project. In selecting an evaluator, applicants are reminded that it is a regulatory requirement to encourage maximum free and open competition, using the applicant's own procurement policies and procedures. The application must indicate whether the third party evaluator was competitively selected, or whether the applicant is proposing a sole source contract for the evaluator. Sole source procurements must be fully justified in the application.

7. Describe ways to collect process and outcome measures data for the project. For examples, applicants should consider a tiered evaluation plan (1) To collect formative evaluation data; and (2) to collect data on outcome measures as the information becomes available. The evaluation plan should address both aspects even though process data may be the only reportable data available for Years 1 and II. The evaluation component of the application

should include methods of collecting descriptive data on the characteristics of the clients served and the services provided. This evaluation should be designed to collect systematic data to answer questions such as the following: What are the characteristics of families who abandon children? What are the service needs of children, mothers, fathers and families of drug exposed infants? Of HIV positive infants? What are the barriers to comprehensive case management and to the coordination of service delivery? What changes have been most helpful in improving the delivery of services? What changes/improvements have there been in the child's well-being and the child's development? What changes have there been in the family's stability and ability to function? What are the permanency outcomes for children?

8. Describe the methods of collecting descriptive data on the characteristics of the clients served and the services provided; and measures of client outcomes. In developing the evaluation component, applicants are required to collect outcome data on the following:

- Substance abuse treatment and recovery;
- Target infant/child characteristics, including gestational age, birth weight, HIV status at birth/15 months, drug screen results;
- Target infant/child placement status—at program intake, 12 months after enrollment in the program and at termination;
- Client termination—child placement status at 12 months after leaving the program.
- Family stability/permanency—e.g., hospitalized, home with biological parent, pre-adoptive, adoptive home, home with relatives, formal kinship foster care, or foster care home at intake, every six months enrolled, at termination and at six months post-termination.

9. Describe ways to collect data on the additional required following outcomes using suggested data collection instruments indicated:

- Child development and well-being at program intake and 12 months after enrollment. Data should also be collected on child injuries, hospitalizations or death following case openings. Suggested instruments include: Bayley Scale of Infant Development; Brazelton Neonatal Behavioral Assessment Scale; Denver Developmental Screening Test; Infant Behavior Questionnaire; and Child Well-Being Scales.
- Client satisfaction at three, six, twelve months and termination. Suggested instruments include: Client Feedback and Customer Satisfaction Survey.

10. Describe ways to collect the data on the following suggested but not required elements. Suggested data collection instruments are also included:

- Parenting skills—Suggested instruments: Parental Outcomes Interview; Knowledge of Child Development Questionnaire;
- Parent (caregiver) child interaction—Suggested instruments: Parental Outcomes Involvement Scale; Parent-Child Early Relational Assessment; and
- Cost Benefit—Discussion of how the project reduces the financial burden on community services, e.g., reduction in the number of days of hospitalization.

11. Provide an assurance that the applicants will submit descriptive data on the clients served and the services provided annually to the National Abandoned Infants Assistance Resource Center. Timeframes for the submission of data on outcome measures will be negotiated within six months after grant award.

12. Provide an assurance that grantee staff will attend the required grantees' meeting held annually. At a minimum, a key staff person from the project and the evaluator will attend the annual 2–3 day grantees' meeting in Washington, D.C. The applicant is further required to participate in any evaluation effort supported by ACYF.

For Priority Area C

Applications submitted under this priority area are to include approaches/strategies to organize, make accessible and implement appropriate services for caregivers of substance-abusing women and women with HIV/AIDS and their families. They must:

1. Describe the applicant's understanding of the problems involved in caring for children of substance-abusing and/or HIV-positive parent(s) and an understanding of the special needs of children who may be HIV-positive;

2. Describe the multiple needs of the relative caregivers, particularly the support services needed to address the unique needs of families dealing with intergenerational differences and issues, including caring for siblings;

3. Show the applicant's evidence of a commitment to work with a social service, public health, mental health agency or legal services in providing needed consultation, support services and advice to family caregivers;

4. Describe the applicant's understanding of the program, service and legal issues involved in serving families affected by substance abuse and HIV/AIDS.

5. Include an assurance of a third party evaluation of the project. In order to evaluate the competence of the third-party evaluator and to assure that the evaluation methodology and design are appropriate, the third party evaluator must write the evaluation section of the application. This means that the evaluator must be selected as soon as possible after an applicant has decided to compete for a demonstration project. In selecting an evaluator, applicants are reminded that it is a regulatory requirement to encourage maximum free and open competition, using the applicant's own procurement policies and procedures. The application must indicate whether the third party evaluator was competitively selected, or whether the applicant is proposing a sole source contract for the evaluator. Sole source procurements must be fully justified in the application.

6. Provide an assurance that a key staff person from the project and the evaluator will attend an annual 2–3 day grantees' meeting in Washington, D.C. The applicant must agree to participate in any evaluation effort supported by ACYF.

D. Staff Background and Experience

1. Describe the applicant's experience in providing comprehensive services to substance-abusing women and women who have HIV/AIDS and their infants and/or young children, as well as the applicant's experience in collaborating with community-based agencies. Describe the applicant's history and relationship with the targeted community. Include a complete discussion of relevant program, administrative and fiscal management experience.

2. If the applicant represents a consortium of partner agencies, explain the relevant background of each partner and the partners' experience in planning and implementing programs to serve children and families impacted by substance-abuse and HIV/AIDS. Each partner must provide a letter of commitment which authorizes the applicant to apply on behalf of the consortium.

3. Identify and provide a brief description of key staff who are proposed to work in the program and indicate their educational training and experience in working with similar programs. Provide resumes. In addition, explain how the ethnic and racial composition and language proficiencies of the proposed staff persons is reflective of the community to be served.

4. Describe the experience and provide resumes of the individuals who will assist the program in conducting the evaluation activities.

E. Budget Appropriateness

1. Provide a detailed line-item budget. In the proposed budget, applicants must include sufficient funds so that at least two staff can travel to Washington, D. C. for the annual grantee's conference. (Attendance at this conference is a grant requirement.) Each budget should include the required non-Federal share of the cost of the project.

2. Describe how the budget reflects high quality, ongoing service provided at reasonable costs. Include a discussion on the appropriateness of staff compensation levels and funds sets aside to promote staff training, as needed. Explain the efforts the applicant has made to secure other community case and/or in-kind resources.

Part IV. Evaluation Criteria

In considering how applicants will carry out the responsibilities addressed under Part III of this announcement, competing applications will be reviewed and evaluated against the following five criteria. The point values following each criterion indicate the numerical weight each criterion will be accorded in the review process.

A. Criterion 1. Objectives and Need for Assistance (20 Points)

The extent to which the applicant:

- Identifies the relevant socioeconomic and demographic characteristics of women of child-bearing age who are substance-abusers and/or infected with HIV/AIDS, as well, as the community resources available or the gaps in services which demonstrate a need for the project;
- Addresses the goals of the legislative mandate to address the needs of infants who have been exposed to a dangerous drug or who have been perinatally exposed to the HIV virus and who may be at risk of abandonment;
- Identifies goals that address the social service support needs of women impacted by substance-abuse or HIV/AIDS and how those support will enhance family stability and functioning;
- Proposes objectives and need for assistance that (1) address the community's needs and the needs and concerns of the targeted families; and (2) help ameliorate the issues confronted by women, children and families who are impacted by substance-abuse and HIV/AIDS; and (3) address the permanency placement needs of infants and young children involved in the service demonstration project;
- Draws on the available services in the community, if available;
- Describes the population to be served by the project and explains why this population is in most need; and describe the permanency planning needs of the infants and young children and strategies to address those needs that either prevent abandonment or subsequent entries into the child welfare system;
- Gives a precise location and rationale for the project site/area to be served.

B. Criterion 2. Results of Benefits Expected (10 Points)

The extent to which the applicant:

- Identifies the results and benefits to be derived from the project and links these to the stated objective(s);
- Describes the types of data to be collected and how it will be utilized to measure progress towards the stated results or benefits; and
- Describes how the lessons learned from the project will benefit policy, practice, theory and/or research in both addressing the social service needs of substance-abusing or HIV/AIDS women and their families or in establishing permanency for the infants and young children in the target population.

C. Criterion 3. Approach (40 Points)

The extent to which the applicant:

- Outlines a workable plan of action which relates to the stated objectives and scope of the project and reflects the intent of the legislative mandates and details how the proposed work will be accomplished;
- Addresses the permanency outcomes for infants and young children, for example, by conducting concurrent planning with the family or by expediting permanency after all appropriate stabilizing efforts with the biological family have been tried;
- Lists the activities to be conducted in chronological order, showing a reasonable schedule of accomplishments and target dates;
- If the applicant is proposing to conduct a transitional residence for infants impacted by substance-abuse and/or HIV/AIDS, the extent to which the applicant develops and executes plans for infants not to exceed six months in the residence and plans for permanency for the infants or young children. (Applicants who are proposing transitional residence services and do not respond to this sub-criterion will be considered non-responsive to the **Federal Register** announcement. Applicants who are proposing transitional residence services and do not include a copy of the appropriate state license will be considered non-responsive to the **Federal Register** announcement.);
- Identifies the kinds of data to be collected and maintained and discusses the criteria to be used to evaluate the results and successes of the project; and
- Describes the evaluation methodology that will be used to determine if the needs identified and discussed are met and if the results and benefits identified are achieved.

D. Criterion 4. Staff Background and Organizational Experience (20 Points)

The extent to which the applicant:

- Demonstrates that the proposed project director, key project staff and the evaluator have the ability to effectively and efficiently administer a project of this size, scope and complexity, including their experience and background in working with women who are substance-abusing or have HIV/AIDS and the young children and families impacted by those issues and their experience working with local and state child welfare systems and their familiarity with child welfare issues;
- Details the organization's experience in addressing the needs of women and families impacted by substance-abuse and/or HIV/AIDS; and
- Describes the adequacy of the applicant's management plan to ensure its capacity and efficiency to accomplish the goals of the project.

E. Budget Appropriateness (10 Points)

The extent to which the applicant justifies the following:

- Costs are reasonable in view of the activities to be conducted and the expected results and benefits;
- Salaries and fringe benefits reflect the level of compensation appropriate for the proposed staff responsibilities; and
- The non-Federal contribution of the total project costs.

Part V. Instructions for the Development and Submission of Applications for FY 1997

This part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The

priority area descriptions are in Part II and the application requirements are in Part III.

A. Availability of Forms

Eligible applicants interested in applying for funds must submit a complete application including the required forms at the end of this program announcement in Appendix A. In order to be considered for a grant under this announcement, an application must be submitted on the Standard Form 424 (approved by the Office of Management and Budget under Control Number 0348–0043). A copy has been provided. Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs'' (approved by the Office of Management and Budget under Control Number 0348–0040). Applicants must sign and return the Standard Form 424B with their application. Applicants must provide a certification regarding lobbying (approved by the Office of Management and Budget under Control Number 0348–0046). Prior to receiving an award in excess of $100,000 applicants shall furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under Control Number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants will be held accountable for the smoking prohibition included with Pub.L. 103–227, Part C Environmental Tobacco Smoke (also known as the Pro-Children's Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with the forms. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the application.

B. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record-keeping requirements or program announcements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. This program announcement meets all information collection requirements approved for ACF grant applications under OMB Control Number 0970–0139.

C. Required Notification of the State Single Point of Contact

The Abandoned Infants Program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of January 1997, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington.

All remaining jurisdictions participate in the Executive Order process and have established State Single Point of Contact (SPOCs). Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective application and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the review process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate'' or ''explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW, Mail Stop 6C–462, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Appendix B of this announcement.

D. Deadline for Submission of Applications

The closing time and date for the receipt of applications is 4:30 p.m. (Eastern Time Zone) on July 21, 1997. Applications *must be received* by 4:30 p.m. on that day. Applications received after 4:30 p.m. will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received *on or before the deadline time and date* at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW, Mail Stop 6C–462, Washington, DC 20447, Attention: Abandoned Infants Assistance Program (Reference Announcement Number and Priority Area A, B, or C). Applicants are responsible for mailing applications well in advance, when using the mail services, to ensure that the applications are received on or before the deadline time and date.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m. at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, DC 20024 between Monday and Friday (excluding Federal Holidays). Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications which do not meet the criteria stated above are considered late applications. ACF shall notify each late applicant that

its application will not be considered in the current competition.

Extension of Deadlines: ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mail. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

E. Instructions for Preparing the Application and Completing Application Forms

The SF 424, 424A, 424B, and certifications have been reprinted for your convenience in preparing the application. See Appendix A. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet. Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted under only one priority area.

Item 1. Type of submission—Preprinted on the form.

Item 2. Date Submitted and Applicant Identifier—Date application is submitted to ACYF and applicant's own internal control number, if applicable.

Item 3. Date Received By State—State use only (if applicable).

Item 4. Date Received by Federal Agency—Leave blank.

Item 5. Applicant Information Legal Name—Enter the legal name of the applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

Organizational Unit—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

Address—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

Name and telephone number of the person to be contacted on matters involving this application (give area code)—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This individual should be accessible at the address given here.

Item 6. Employer Identification Number (EIN)—Enter the employer identification number of the applicant organization, as assigned *only* by the DHHS Central Registry System. EIN prefixes and suffixes assigned by agencies other than DHHS are not valid at DHHS/ACF.

Item 7. Type of Applicant—Self-explanatory.

Item 8. Type of Application—Preprinted on the form.

Item 9. Name of Federal Agency—Preprinted on the form.

Item 10. Catalog of Federal Domestic Assistance Number and Title—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title, as indicated in the relevant priority area description. The CDFA number for the Abandoned Infants Assistance Program is 93.551.

Item 11. Descriptive Title of Applicant's Project—Enter the project title and the priority area number in parenthesis after the project title. The title is generally short and is descriptive of the project.

Item 12. Areas Affected by Project—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. Proposed Project—Enter the desired start date for the project and projected completion date.

Item 14. Congressional District of Applicant/Project—Enter the number of the Congressional District where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter 00.

Items 15. Estimated Funding Levels In completing 15a through 15f, the dollar amounts entered should reflect, for a 12 month budget period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Item 15 b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or matching funds. The value of third party in-kind contributions should be included on appropriate lines as applicable.

Items 15f. Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. Is Application Subject to Review By State Executive Order 12372 Process? Yes, except for the 18 jurisdictions listed above. Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided in Appendix B. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. Is Application Subject to Review By State Executive Order 12372 process? No.—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. Is the Applicant Delinquent on any Federal Debt?—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18 a–c. Typed Name of Authorized Representative, Title, telephone Number—Enter the name, title and telephone number of the authorized representative of the applicant organization. This individual will receive all ACF/ACYF

correspondence regarding the application.

Item 18d. Signature of Authorized Representative—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. Date Signed—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs. This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering the first year budget period.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers the first year budget period if the proposed project period exceeds 12 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate itemized budget justification for each line item is required. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, Other.

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total cost of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, Other.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. Equipment is defined as an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes of (b) $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) Procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, other.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements. Applicants who anticipate procurement that will exceed $5,000 (non-governmental entities) or $25,000 (governmental entities) and are requesting an award without competition should include a sole source justification in the proposal which at a minimum should include the basis for contractor's selection, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price. (Note: Previous or past experience with a contractor is not sufficient justification for sole source.)

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as miscellaneous and honoraria are not allowable.

Justification: Specify the costs included.

Total Direct Charge—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter none. Generally, this line should be used when the applicant has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with DHHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

Justification: Enclose a copy of the indirect cost rate agreement.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program

income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled Totals. In-kind contributions are defined in 45 CFR, 74.51 and 45 CFR 92.3, as property or services which benefit a grant-supported project or program and which are contributed by non Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs, Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 12 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column (b) First. If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under (c) Second. Column (d) would be used in the case of a 48 month project. Column (e) would not apply.

Section F—Other Budget Information.

Direct Charges—Line 21, Not applicable.

Indirect Charges—Line 22, Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 12 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description. Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the application. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project abstract. It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

At the bottom of the page, following the summary description, type up to 10 key words which best describe the proposed project, the service(s) involved and the target population(s) to be covered. These key words will be used for computerized information retrieval for specific types of funded projects.

4. Program Narrative Statement. The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Parts II and III.

The narrative should provide information concerning how the application meets the evaluation criteria using the following headings:

(a) Objectives and Need for Assistance;

(b) Results and Benefits Expected;

(c) Approach;

(d) Staff Background and Organization's Experience; and

(e) Budget Appropriateness.

The narrative should be typed double-spaced on a single-side of an 8½″ × 11″ plain white paper, with 1″ margins on all sides using standard type sizes or fonts (e.g., Times Roman 12 or Courier 10. Type should be no smaller than 10 point). Applicants should not submit reproductions of larger paper reduced to meet the size requirement. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with Objectives 84 and Need for Assistance as page number one.

The length of the application, including the application forms and all attachments, should meet criteria set forth in each Priority Area. A page is a single side of an 8½ × 11″ sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the page limit criteria. If the applicant chooses to submit printed materials, the applicant must provide a duplicate or a copy of each printed document with each copy of the application submitted. Each page of the application will be counted to determine the total length.

5. Organizational Capability Statement. The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Assurances/Certifications. Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; (2) Debarment and Other Responsibilities; and (3) Pro-Children Act of 1994 (Certification Regarding Environmental Tobacco Smoke). Copies of the assurances/certifications are reprinted at the end of this announcement (see Appendix A) and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities and Environmental Tobacco Smoke certifications.

A signature on the application constitutes an assurance that the applicant will comply with the pertinent Departmental regulations contained in 45 CFR part 74 and 45 CFR part 92. Applicants requesting financial assistance for a non-construction project must file the standard SF–424B, ''Assurances-Non—Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications.

7. Statutory Assurances. Applicants seeking funding under the Abandoned Infants Assistance Act, Pub. L. 102–236, are required to meet the following

assurances. Any assistance needed to comply with these requirements should be discussed with the local public child welfare agency. Applicants must submit written assurance that they will comply with the Statutory Assurances outlined under sections 101 (b), (c) and (d) of Pub. L. 102–236:

(1) That the applicant give priority to abandoned infants and young children (a) who are infected with the human immunodeficiency virus or who have been perinatally exposed to the virus; or (b) who have been perinatally exposed to a dangerous drug.

(2) That, if the applicant expends the grant to carry out any program of providing care to infants and young children in foster homes or in other nonmedical residential settings away from their parents, the applicant will ensure that (a) a case plan of the type described in paragraph (1) of section 475 of the Social Security Act is developed for each such infant and young child (to the extent that such infant and young child are not otherwise covered by such a plan); and (b) the program includes a case review system of the type described in paragraph (5) of such section (covering each such infant and young child who is not otherwise subject to such a system).

(3) That funds provided under section 101(a) shall be used only as specified in the application approved by the Secretary (section 101(d)(1)(A).

(4) That fiscal control and fund accounting procedures will be established as may be necessary to ensure proper disbursement and accounting of Federal funds paid to the applicant under this announcement (section 101(d)(1)(B).)

(5) That reports to the Secretary will be made annually on the utilization, cost and outcomes of activities conducted and service furnished under this grant (section 101(d)(1)(C).

(6) If during the majority of the 180-day period preceding the data of the enactment of this Act, the applicant has carried out any program with respect to the care of abandoned infants and young children, the applicant must certify that funds provided under the grant will be expended only for the purpose of expanding such service (section 101(d)(1)(D).

F. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two complete copies. Applications for different priority areas are packaged separately;
—Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);
—Application length does not exceed 75 pages, unless otherwise specified in the priority area description. A complete application consists of the following items in this order:
—Application for Federal Assistance (SF 424, Rev. 4–92);
—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424;
—Budget Information-Non-Construction Programs (SF 424A, REV 4–92);
—Budget justification for Section B-Budget Categories;
—Table of Contents;
—Letter from the Internal Revenue Service to prove non-profit status, if necessary;
—Copy of the applicant's approved indirect cost rate agreement, if appropriate;
—Project summary description and listing of key words;
—Program Narrative Statement (See Part III, Section C);
—Organizational capability statement, including an organization chart;
—Any appendices/attachments;
—Assurances-Non-Construction Programs (Standard Form 424B, Rev. 4–92);
—Certification Regarding Lobbying; and
—Certification Regarding Environmental Tobacco Smoke (Pro-Children Act Certification).

G. The Application Package

Each application package must include an original and two complete copies of the application. Each copy should be secured with a binder clip in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation. Applicants are advised that the copies of the applications submitted, not the original, will be reproduced by the Federal government for review.

Do not include a self-addressed, stamped acknowledgement card. All applicants will be notified automatically about the receipt of their application. If acknowledgement of receipt of your application is not received within eight weeks after the deadlines date, please notify the ACYF Operations Center by telephone at 1–800–351–2293.

Dated: May 13, 1997.

James A. Harrell,

Acting Commissioner, Administration on Children, Youth and Families.

References

AIA Factsheet, Number 2, November, 1995. *Perinatal Substance Exposure.* National Abandoned Infants Assistance Resource Center. University of California at Berkeley.

AIA Factsheet, Number 3, January, 1996. *Women and Children with HIV/AIDS.* National Abandoned Infants Assistance Resource Center. University of California at Berkeley.

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APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX A

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ - ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify)_____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ - ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV 4-92)
Prescribed by OMB Circular A-102

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Instructions for the SF 424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget. Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State, if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities.)

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit allowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY						
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES					
6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 4-92)
Prescribed by OMB Circular A-102

SECTION C — NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E — BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL (sum of lines 16 - 19)	$	$	$	$

SECTION F — OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 4-92) Page 2

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Instructions for the SF 424A

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Please do not return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple function or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number of each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum in Columns (e) and (f).

Line 5—Shown the total for all columns used.

Section B. Budget Categories

In the column headings (1) through (4) enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k, should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals in Columns (b), (c), and (d).

Line 12—Enter the total for each Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications an continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing

the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award: and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. §§ 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.O. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A–133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

Signature of Authorized Certifying Official

_____

Title

_____

Applicant Organization

_____

Date Submitted

Program Narrative

This program narrative section was designed for use by many and varied programs. Consequently, it is not possible to provide specific guidance for developing a program narrative statement that would be appropriate in all cases. Applicants must refer the relevant program announcement for information on specific program requirements and any additional guidelines for preparing the program narrative statement. The following are general guidelines for preparing a program narrative statement.

The program narrative provides a major means by which the application is evaluated and ranked to compete with other applications for available assistance. It should be concise and complete and should address the activity for which Federal funds are requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other

information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those which will not be used in support of the specific project for which funds are requested.

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements. of measurable goals in quantitative terms. Narratives are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities which will not be directly funded by the grant or information which does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered for easy reference.

Prepare the program narrative statement in accordance with the following instructions:

- Applicants submitting new applications or competing continuation applications should respond to Items A and D.
- Applicants submitting noncompeting continuation applications should respond to Item B.
- Applicants requesting supplemental assistance should respond to Item C.

Project Description—Components

1. *Project Summary/Abstract*

A summary of the project description (usually a page or less) with reference to the funding request should be placed directly behind the table of contents or SF–424.

2. *Objectives and Need for Assistance*

Applicants must clearly identify the physical, economic, social, financial, institutional, or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation such as letters of support and testimonials from concerned interests other than the applicant may be included. Any relevant data based on planning studies should be included or referenced in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the narrative, the applicant may volunteer or be requested to provide information on the total range of projects currently conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

3. *Results or Benefits Expected*

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

4. *Approach*

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking this approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. (Note that clearance from the U.S. Office of Management and Budget might be needed prior to an information collection.) List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

5. *Evaluation*

Provide a narrative addressing how you will evaluate (1) the results of your project and (2) the conduct of your program. In addressing the evaluation of results, state how you will determine the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program. Discuss the criteria to be sued to evaluate results; explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of your program, define the procedures you will employ to determine whether the program is being conducted in a manner consistent with the work plan you presented and discuss the impact of the program's various activities upon the program's effectiveness.

6. *Geographic Location*

Give the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

7. *Additional Information (Include if Applicable)*

Additional information may be provided in the body of the program narrative or in the appendix. Refer to the program announcement and ''General Information and Instructions'' for guidance on placement of application materials.

Staff and Position Data—Provide a biographical sketch for key personnel appointed and a job description for each vacant key position. Some programs require both for all positions. Refer to the program announcement for guidance on presenting this information. Generally, a biographical sketch is required for original staff and new members as appointed.

Plan for Project Continuance Beyond Grant Support—A plan for securing resources and continuing project activities after Federal assistance has ceased.

Business Plan—When federal grant funds will be used to make an equity investment, provide a business plan. Refer to the program announcement for guidance on presenting this information.

Organization Profiles—Information on applicant organizations and their cooperating partners such as organization charts, financial statements, audit reports or statements from CPA/Licensed Public Accountant, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with federal/state/local government standards, documentation of experience in program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Dissemination Plan—A plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

Third-Party Agreements—Written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements may detail scope of work, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Waiver Request—A statement of program requirements for which waivers will be needed to permit the proposed project to be conducted.

Letters of Support—Statements from community, public and commercial leaders which support the project proposed for funding.

B. Noncompeting Continuation Applications

A program narrative usually will not be required for noncompeting continuation applications for nonconstruction programs. Noncompeting continuation applications shall be abbreviated unless the ACF Program Office administering this program has issued a notice to the grantee that a full application will be required.

An abbreviated application consists of:

1. The Standard Form 424 series (SF 424, SF 424A, SF–424B)

2. The estimated or actual unobligated balance remaining from the previous budget period should be identified on an accurate SF–269 as well as in Section A, Columns (c) and (d) of the SF–424A.

3. The grand budget, broken down into the object class categories on the 424A, and if

category ''other'' is used, the specific items supported must be identified.

4. Required certifications.

A full application consists of all elements required for an abbreviated application plus:

1. Program narrative information explaining significant changes to the original program narrative statement, a description of accomplishments from the prior budget period, a projection of accomplishments throughout the entire remaining project period, and any other supplemental information that ACF informs the grantee is necessary.

2. A full budget proposal for the budget period under consideration with a full cost analysis of all budget categories.

3. A corrective action plan, if requested by ACF, to address organizational performance weaknesses.

C. Supplemental Requests

For supplemental assistance requests, explain the reason for the request and justify the need for additional funding. Provide a budget and budget justification *only* for those items for which additional funds are requested. (See item D for guidelines on preparing a budget and budget justification.)

D. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both federal and non-federal resources should be detailed and justified in the budget and narrative justification. For purposes of preparing the program narrative, ''federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other federal and non-federal resources. It is suggested that for the budget, applicants use a column format: Column 1, object class categories; Column 2, federal budget amounts; Column 3, non-federal budget amounts, and Column 4, total amounts. The budget justification should be a narrative.

Personnel. Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, show name/title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits. Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel. Costs of project related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF sponsored workshops as specified in this program announcement should be detailed in the budget.

Equipment. Costs of all non-expendable, tangible personal property to be acquired by the project where each article has a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the applicant organization for financial statement purposes, or (b) $5000.

Justification: For each type of equipment requested, provide a description of the equipment, cost per unit, number of units, total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends.

Supplies. Costs of all tangible personal property (supplies) other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual. Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to by financed by the applicant should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. If procurement competitions were held or if a sole source procurement is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Also provide back-up documentation where necessary to support selection process.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must provide a detailed budget and budget narrative for each delegate agency by agency title, along with the required supporting information referenced in these instructions.

Applicants must identify and justify any anticipated procurement that is expected to exceed the simplified purchase threshold (currently set at $100,000) and to be awarded without competition. Recipients are required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. under the conditions identified at 45 CFR Part 74.44(e).

Construction. Costs of construction by applicant or contractor.

Justification: Provide detailed budget and narrative in accordance with instructions for other object class categories. Identify which construction activity/costs will be contractual and which will be assumed by the applicant.

Other. Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges. Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency.

Justification: With the exception of most local government agencies, an applicant which will charge indirect costs to the grant must enclose a copy of the current rate agreement if the agreement was negotiated with a cognizant Federal agency other than the Department of Health and Human Services (DHHS). If the rate agreement was negotiated with the Department of Health and Human Services, the applicant should state this in the budget justification. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriated DHHS Regional Office. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under this program announcement, the authorized representative of your organization needs to submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income. The estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from program support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification: Describe the nature, source and anticipated use of program income in the budget or reference ages in the program narrative statement which contain this information.

Non-Federal Resources. Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process.

Total Direct Charges, Total Indirect Charges, Total Project Costs. (self explanatory)

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR part 76, Subpart F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements

(Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studies).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statue means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) all direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that

the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participants may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal Act;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BILLING CODE 4184–01–M

OMB No. 9999-0020
OMB No. 0925-0418
Approved for use through 12/31/97

Protection of Human Subjects
Assurance Identification/Certification/Declaration
(Common Federal Rule)

POLICY: Research activities involving human subjects may not be conducted or supported by the Departments and Agencies adopting the Common Rule (56FR28003, June 18, 1991) unless the activities are exempt from or approved in accordance with the common rule. See Section 101(B) the common rule for exemptions. Institutions submitting applications or proposals for support must submit certification of appropriate Institutional Review Board (IRB) review and approval to the Department or Agency in accordance with the common rule.

Institutions with an assurance of compliance that covers the research to be conducted on file with the Department, Agency or the Department of Health and Human Services (HHS) should submit certification of IRB review and ap- proval with each application or proposal unless otherwise advised by the De- partment or Agency. Institutions which do not have such an assurance must submit an assurance and certification of IRB review and approval within 30 days of a written request from the Department or Agency.

1. Request Type	2. Type of Mechanism	3. Name of Federal Department or Agency and, if known, Application or Proposal Identification No.
☐ ORIGINAL ☐ FOLLOWUP ☐ EXEMPTION	☐ GRANT ☐ CONTRACT ☐ FELLOWSHIP ☐ COOPERATIVE AGREEMENT ☐ OTHER: _____	
4. Title of Application or Activity		5. Name of Principal Investigator, Program Director, Fellow, or Other

6. Assurance Status of this Project *(Respond to one of the following)*

☐ This assurance, on file with the Department of Health and Human Services, covers this activity:

Assurance identification no. M-_____ IRB identification no._____

☐ This Assurance, on file with *(agency/dept.)* _____, covers this activity:

Assurance identification no. _____ IRB identification no._____*(if applicable)*

☐ No assurance has been filed for this project. This institution declares that it will provide an Assurance and Certification of IRB review and approval upon request.

☐ *Exemption status:* Human subjects are involved, but this activity qualifies for exemption under Section 101 (b), paragraph _____.

7. Certification of IRB Review *(Respond to one of the following IF you have an Assurance on file)*

☐ This activity has been reviewed and approved by the IRB in accordance with the common rule and any other governing regulations and subparts on *(date)*_____ by: ☐ Full IRB Review or ☐ Expedited Review.

☐ This activity contains multiple projects, some of which have not been reviewed. The IRB has granted approval on condition that all projects covered by the common rule will be reviewed and approved before they are initiated and that appropriate further certification will be submitted.

8. Comments

9. The official signing below certifies that the information provided above is correct and that, as required, future reviews will be performed and certification will be provided.		10. Name and Address of Institution
11. Phone No. *(with area code)*	12. Fax No. (with area code)	
13. Name of Official		14. Title
15. Signature		16. Date

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Public reporting burden for this collection of information is estimated to average 5 minutes per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: PHS Reports Clearance Officer (9999-0020 and 0925-0418), Humphrey Building, 200 Independence Ave. S.W., Washington, D.C. 20201. Attn: PRA. *Do not return the completed form to this address.*

OPTIONAL FORM 310 (Rev. 1-95)
Sponsored by HHS/PHS/NIH

BILLING CODE 4184–01–C

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

_____

Date

BILLING CODE 4184–01–M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For material change only** Year_____ Quarter_____ date of last report_____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known.* Congressional District, *if known*	**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** Congressional District, *if known*	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** **CFDA Number,** *if applicable:*	
8. Federal Action Number, ***if known*:**	**9. Award Amount,** ***if known*:** $	
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
Items 11 through 15 are deleted.		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184–01–C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Appendix B—OMB State Single Point of Contact Listing

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315, FAX: (602) 280–1305

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordinator, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone (916) 323–7480, FAX (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact Executive Department, Thomas Collins Building, PO Box 1401, Dover, Delaware 19903, Telephone (302) 739–3326, FAX (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, NW—Suite 500, Washington, DC 20005, Telephone (202) 727–6554, FAX: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, FAX: (904) 487–2899

Georgia

Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, FAX: (404) 656–7938

Illinois

Virginia Bova, State Single Point of Contact, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Frances Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4859

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, FAX: (502) 573–2512

Maine

Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

William G. Carroll, Manager, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 225–4490, FAX: (410) 225–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 1900 Edison Plaza, 660 Plaza Drive, Detroit, Michigan 48226, Telephone: (313) 961–4266

Mississippi

Cathy Malette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Robert Peters, State Budget Division, Room 190 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605, FAX: (518) 486–5617

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Board Street, 34th Floor, Columbus, Ohio 43266–0411, Please direct correspondence and questions about intergovernmental review to: Linda Wise, Telephone: (614) 466–0698, FAX: (614) 466–5400

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration/Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083, Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Rodney Grizzle, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street—Room 331, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0356

Texas

Tom Adams, Governor's Office, Director, Intergovernmental Coordination, PO Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1888

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia

Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

Wisconsin

Jeff Smith, Section Chief, State/Federal Relation, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, PO. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931

Wyoming

Matthew Jones, State Single Point of Contact, Office of the Governor, 200 West 24th Street, State Capitol, Room 124 Cheyenne, Wyoming 82002, Telephone: (307) 777–7446, FAX: (307–632–3909

Territories

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444, (809) 723–6190, FAX: (809) 724–3270, (809) 724–3103

North Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, State Single Point of Contact, Office of Management and Budget, Office of the Governor, Saipan, MP, Northern Mariana Islands 96950, Telephone: (670) 664–2256, FAX: (670) 664–2272, Contact Person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone (670) 644–2289, FAX: (670) 644–2272

Virgin Islands

Nelson Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802, Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069.

In accordance with Executive Order #12372, ''Intergovernmental Review of Federal Programs,'' this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process but grant applicants are still eligible to apply for the grant even if your state, territory, commonwealth, etc does not have a ''State Single Point of Contact.''States Without ''State Single Points of Contact'' include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Kansas, Hawaii, Idaho, Louisiana, Massachusetts, Palau, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington. This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

Appendix C—Currently Funded Abandoned Infants Service Demonstration Projects

Bienvenidos Children's Center, 421 South Glendora Avenue, West Covina, California 91790

San Joaquin County, Department of Health Care Services, 500 West Hospital Road, French Camp, California 95231

Yale University, School of Medicine, Child Study Center, 333 Cedar Street, New Haven, Connecticut 06510

Consortium for Child Welfare, 300 Eye Street, NE., Suite 209, Washington, DC 20002–4389

Children's Home Society of Florida, 800 N.W. 15th Street, Miami, Florida 33136–1494

Emory University School of Medicine, Department of Pediatrics, 2040 Ridgewood Drive, NE, Atlanta, Georgia 30322

Illinois State Department of Children and Family Services, 406 East Monroe Street, Springfield, Illinois 62701, (Project site: Chicago, IL)

Children's Mercy Hospital, 24th at Gillham Road, Kansas City, Missouri 64108

New York State Department of Social Services, Division of Family and Children Services, 40 N. Pearl Street, Albany, New York 12243, (Project site: Manhattan, NY)

New Jersey State Department of Human Services, 50 East State Street, CN 717, Trenton, New Jersey 08625 (Project site: Newark, NJ)

University of New Mexico, School of Medicine, 915 Camino de Salud, NE, Albuquerque, New Mexico 87131

University of Oklahoma Health Sciences Center, Department of Pediatrics, Child Study Center, 1100 NE 13th Street, Oklahoma City, Oklahoma 73117

Allegheny University of Health Sciences Center, Broad and Vine Streets, Mail Stop 404, Philadelphia, Pennsylvania 19102

Children's AIDS Network Designed for Interfaith Involvement (CANDII), Suite F–116, 222 West 21st Street, Norfolk, Virginia 23517

The University of Tennessee, Memphis Department of Pediatrics—Newborn Center, 800 Madison Avenue, Memphis, Tennessee 38163

The following projects are currently funded but have project periods ending this fiscal year.

Orange County Social Services Agency, 1055 N. Main Street, Suite 600, Santa Ana, California 927021

Tarzana Treatment Center, 18646 Oxnard Street, Tarzana, California 91356–1486

Children's Institute International, 711 S. New Hampshire Avenue, Los Angeles, California 90005

Delaware Department of Health and Social Services, Division of Alcoholism, Drug Abuse and Mental Health, 1901 No. DuPont Highway, New Castle, Delaware 19720

The Center for Drug-Free Living, Inc., 100 W. Columbia Street, Orlando, Florida 32806

Illinois State Department of Children and Family Services, 406 East Monroe Street, Springfield, Illinois 62701 (Project site: Chicago, IL)

Children's Hospital of New Orleans, 200 Henry Clay Avenue, New Orleans, Louisiana 70118

Maryland State Department of Human Resources, 311 West Saratoga Street, Room 931, Baltimore, Maryland 21201

Massachusetts State Department of Public Health, Division of Perinatal and Child Health, 150 Tremont Street, 4th Floor, Boston, Massachusetts 02111 (Project sites: Springfield, and New Bedford, MA)

New Jersey State Department of Human Services, 50 East State Street, CN 717, Trenton, New Jersey 08625 (Project site: Jersey City, NJ)

Children's Hospital, 219 Bryant Street, Buffalo, New York 14222

Child & Family Services of Knox County, 114 Dameron Avenue, Knoxville, Tennessee 37917.

[FR Doc. 97–13283 Filed 5–21–97; 8:45 am]

BILLING CODE 4184–01–M

federal register

Thursday
May 22, 1997

Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling; Timeframe for Final Rules Authorizing Use of Health Claims; Final Rule and

Food Labeling; Health Claims; Soluble Fiber from Certain Foods and Coronary Health Disease; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 97N–0075]

Food Labeling; Timeframe for Final Rules Authorizing Use of Health Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to provide a timeframe in which it will issue, in rulemakings on health claims, final rules announcing whether it will authorize the use of the claim at issue. FDA is also providing for extensions of that timeframe for cause. The agency is issuing this final rule in response to a recent judicial decision.

DATES: This final rule will be effective June 23, 1997.

FOR FURTHER INFORMATION CONTACT: Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–205–5483.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 17, 1997 (62 FR 12579), FDA proposed to amend its health claim regulations (§ 101.70 (21 CFR 101.70)) to establish a timeframe in which it would issue final rules in proceedings on whether to authorize claims on diet-disease relationships. FDA issued this proposal in response to the decision in *Nutritional Health Alliance* v. *Shalala*, 95 Civ. 4950 (RO) (S.D.N.Y.) (*NHA* v. *Shalala*), which involved a First Amendment challenge to the constitutionality of FDA's health claim regulations. As part of its decision, the court ordered FDA to establish a reasonable timeframe for the issuance of health claim final rules.

FDA proposed to amend § 101.70 to state that within 270 days of the date of publication of a proposal to authorize a health claim, the agency will publish a final rule that either authorizes the use of a health claim or explains why the agency has decided not to authorize one (proposed § 101.70(j)(4)(i)). FDA also proposed to provide that, for cause, the agency may extend the period in which it will publish a final rule. The proposal stated that FDA will publish a notice of any such extension in the **Federal Register**, and that it will explain in that notice the basis for the extension, the length of the extension, and the date by which the final rule will be published (proposed § 101.70 (j)(4)(ii)).

In response to the proposal, FDA received four letters, each containing one or more comments. Some of the comments addressed issues, such as the burdensomeness of the health claim petition process, disqualifying levels, and the legality of the court's decision in *NHA* v. *Shalala*, that are outside the scope of this rulemaking, which focuses only on the establishment of a timeframe for issuance of final rules in health claim proceedings. Therefore, FDA will not address these comments in this document. The relevant comments that FDA received, and the agency's response to them, are set out in the discussion that follows:

II. Response to Comments

A. Timeframe of 270 Days

1. As stated in section I of this document, FDA proposed to establish a timeframe of 270 days from the date that it issues a proposal to the date of publication of the final rule. FDA justified providing a 270-day timeframe by describing the steps it had to take to arrive at a final rule and by reviewing its experiences in three health claim proceedings: Folate and neural tube defects (61 FR 8779, March 5, 1996), sugar alcohols and dental caries (61 FR 8752 at 43433, August 23, 1996), and whole oat products and coronary heart disease (62 FR 3584, January 23, 1997).

Although several of the comments found merit in FDA's proposal to establish a timeframe, all asserted that the 270-day timeframe is too long. One comment asserted that it would be unreasonable to allow this much time to pass between the publication of the proposal and the final rule. Two comments argued that the major issues raised by a health claim petition are resolved in the 190-day period before the agency issues a proposal. One of these comments argued that the 190-day period conforms with other statutory time limits placed on the agency, such as those for food additives, abbreviated new drug applications, and device classification petitions, and, thus, that little additional time should be allowed for publication of a final rule. These comments took issue with FDA's reliance on the folate proceedings for support of the 270-day proposal. One comment argued that the controversy in that rulemaking concerned the development of FDA's fortification policy for folic acid, not the health claim itself; and the other comment asserted that FDA disregarded the recommendations of the Public Health Service on folate and neural tube defects. One of these comments also took issue with FDA's reliance on the whole oat product proceeding, arguing that in the whole oat product proceeding FDA should first have issued authorization for claims on oatmeal and oat bran and then considered the comments that it received that suggested that the evidence before the agency supported a claim for whole oat flour. Finally, one comment asserted that the timeframe should require the agency to put a high priority on completing the proceeding. The comment stated that providing 180 to 210 days would better accomplish this goal, and that if a longer period were justified in a particular proceeding, FDA could grant itself an extension.

FDA has carefully considered these comments, but it does not agree that 270 days is too long or unreasonable. The agency agrees with the comment that stated that the timeframe should be one that puts a high priority on completion of the rulemaking. This will be the effect of a 270-day timeframe.

The agency points out that claims that most of the issues raised by a petition are resolved by the time FDA publishes a proposal simply do not reflect the agency's experience. If a proposal for a health claim were ever received by the public without controversy, FDA would act rapidly to issue a final rule shortly after the comment period closed. However, every health claim proposal that FDA has issued has been controversial. The agency received numerous responses on each of the proposals for folate, sugar alcohols, and whole oats products cited previously in this section. The proposal for folate, sugar alcohols, and whole oats products received approximately 100, 20, and 1,450 comments, respectively. These comments ranged from questioning the basis for the claim, to the scope of the proposed claim, to the very validity of the claim. The obligation to receive comments on the agency's proposed resolution of the issues raised by a petition, and to respond to those comments, is what sets health claims apart from the proceedings cited in one of the comments.

Contrary to the comments, the whole oat product proceeding illustrates the type of rethinking of the proposal that comments engender. As stated in the proposal (62 FR 12579 at 12581), FDA's proposal to authorize a claim for oatmeal and oat bran elicited comments that it should also authorize the claim for whole oat flour. It is true, as one comment stated, that FDA could have

issued a final rule on oatmeal and oat bran and then proceeded to consider the question of whole oat flour separately. However, doing so would have required the creation of two **Federal Register** documents rather than one. FDA's goal is to ensure that a health claim, providing as much truthful, nonmisleading, and scientifically valid information as possible, is authorized as soon as possible. FDA managers concluded, based on their evaluation of agency resources that, on balance, having to prepare one document would result in more information being authorized faster than if the agency had to prepare two documents. Thus, FDA followed the course that it did.

Moreover, contrary to the comments, FDA's reliance on the folic acid proceeding, as illustrative of the intradepartmental input that FDA tries to receive in arriving at a final rule (62 FR 12579 at 12580 and 12581) was appropriate and relevant. The controversy in the folic acid rulemaking was not focused on FDA's fortification policy per se, nor did FDA disregard the recommendations of the Public Health Service. The question that FDA dealt with in that proceeding was whether authorization of claims about the relationship between folate, including folic acid, and neural tube defects would result in the fortification of the food supply at a level that would present a risk to those who suffer from vitamin B_{12} deficiency (see, e.g., 58 FR 2606 at 2614 (January 6, 1993)). In recognizing the relationship between folate and neural tube defects in 1992, the Public Health Service recognized that this safety question was presented (see 58 FR 2606 at 2609), and that it needed to be addressed. As FDA tried to resolve the question of what level of folate in the food supply would be safe, it found that there was some disagreement within the Public Health Service about this question. Although FDA resolved this question, it took time for it to do so, and the fact that it did take time was the reason that FDA referred to the folate rulemaking in the proposal.

Moreover, there is reason to believe that FDA's need for time to resolve issues within the Public Health Service in arriving at a final rule will continue. Elsewhere in this issue of the **Federal Register**, FDA is isssuing a proposal to authorize a health claim on the relationship of soluble fiber from psyllium husk and the risk of coronary heart disease. This proposal reveals that there are reservations within the Public Health Service about whether the available evidence establishes the scientific validity of this substance-disease relationship. While FDA, because of its commitment to authorize as much health claim information as possible as fast as possible, is issuing the proposal based on its tentative conclusion that the scientific standard is met, it is likely that discussions within the Public Health Service will be necessary in arriving at a final rule. This fact supports that 270 days from the publication of the proposal may well be necessary to arrive at a satisfactory resolution of the issues raised by a substance-disease relationship.

Thus, FDA's experience supports that a significant amount of time is necessary after the close of a comment period in a health claim proceeding for FDA to analyze the comments, evaluate the evidence that bears on the issues raised by the comments, and arrive at a final rule. FDA explained in the preamble to the proposal why it may take up to 195 days to do so (270 days minus the 75 day comment period). The comment that asserted that this work could be done in 105 to 135 days (180 to 210 day timeframe) did not present any evidence to support its assertion.

Therefore, FDA has concluded that 270 days from the publication of a proposal represents a reasonable and appropriate timeframe for publication of a final rule in a health claim proceeding.

2. Two comments complained that 270 days represented an unfair burden on industry. One comment asserted that it would mean that a company would have to wait 16 months from the time that it submitted its petition to make a claim that it had documented was supported by significant scientific agreement.

FDA recognizes that these comments raise a significant point. The court in *NHA* v. *Shalala* expressed concern about the fact that speech that FDA has tentatively determined is scientifically valid is prohibited while FDA arrives at a final rule (see slip op. at 10). Nonetheless, FDA points out that there are countervailing interests here that must be balanced against those of a manufacturer in making health claims. As the court recognized in *NHA* v. *Shalala*, the Government has a substantial interest in ''preventing the spread of unsubstantiated health claims on labels so that consumers may not be deceived and follow unsound health practices; ensuring the reliability of scientific information disseminated in connection with the sale of dietary supplements; and protecting consumers from being induced to purchase products by misleading information on labels.'' (Slip op. at 8.) Moreover, a system that requires premarket authorization of health claims directly and materially advances these substantial interests (id.).

The question that the comments thus raise is whether requiring that firms wait 9 months from the time that their requested speech has been determined to be presumptively valid (that is, from the date that FDA proposes to authorize the claim they seek to make) imposes more of a burden than is necessary to further the Government's legitimate interests. (See *Board of Trustees of the State University of New York* v. *Fox*, 492 U.S. 469, 478 (1989).) FDA concludes that it does not.

In the March 17, 1997, proposal, FDA carefully delineated why it will require 270 days from the date of issuance of the proposal to decide whether health claims about the substance-disease relationship that it has proposed to authorize will in fact be scientifically valid. While, as stated in section II.A.1 of this document, it may be possible for FDA to issue a final rule in less time, and FDA will endeavor to do so, 270 days represents a reasonable estimate of the amount of time that it will require to ensure that the authorization it issues in the final rule is consistent with the policies embodied in the Federal Food, Drug, and Cosmetic Act and in the implementing regulations.

None of the comments have demonstrated that a 270-day period is substantially excessive. (See *Board of Trustees of the State of New York* v. *Fox*, *supra*, 492 U.S. at 479.) Thus, FDA is making no change in the provision for a 270-day timeframe in response to these comments.

3. One comment argued that persons should be permitted to begin using health claims when they are issued in proposed form by FDA. The comment pointed out that the agency would not have issued the proposal if it did not believe that there was significant scientific support for the validity of the relationship that is the subject of the claim. One comment said that the timeframe that FDA establishes should provide predictability and certainty for the industry.

FDA has considered how to accommodate the concerns expressed by these comments. The agency finds that it cannot authorize claims to be made based on the proposal. The point of the health claim proceeding is to ensure that claims are scientifically valid, truthful, and not misleading. There is always the possibility that even though FDA has tentatively concluded that a substance-disease relationship is scientifically valid, it will receive comments that will challenge that tentative conclusion. For example, FDA tentatively concluded that there is a

relationship between sodium and hypertension, but the agency received comments arguing that the available scientific evidence did not support that sodium had an effect on hypertension (see 58 FR 2820 at 2822 to 2826, January 6, 1993). It would have been inappropriate for FDA to allow claims on sodium and hypertension while it was still deciding whether these claims are valid. To permit claims on the basis of a proposal would be to permit preliminary claims. The health claim provisions of the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535) were passed to protect consumers against such claims (see 59 FR 395 at 403, January 4, 1994). Therefore, FDA finds that it cannot accommodate this comment.

As for providing predictability and certainty, FDA points out that no predictability or certainty that a claim could ultimately be made can derive from the filing of a petition. On several occasions, firms have filed petitions that they thought demonstrated that there was significant scientific agreement in support of a claim, but FDA has found that it could not agree and denied the petition (e.g., see FDA response to petition on calcium and hypertension (Docket No. 96P–0047).

As for predictability and certainty from the date of publication of a proposal, FDA advises that, as explained previously, certainty is not possible because new evidence may be submitted in comments that establish that the substance-disease relationship is not scientifically valid. Such a result is not likely, but the agency cannot rule it out.

Predictability also cannot be ensured. While FDA is committing itself to issuing a final rule 270 days from the date of publication of a proposal, it is FDA's firm desire to issue final rules in as little time as possible. Moreover, occasionally, the agency may be compelled to grant itself an extension.

Thus, FDA cannot provide predictability and certainty. However, a firm that submits a well-supported petition can do so with some confidence that, within 16 months from the date of submission, it will likely be able to make claims about the substance-disease relationship that is the subject of its petition.

B. Extensions

4. Several comments asserted that it was likely that FDA would not complete rulemakings within the 270-day period. These comments argued that, therefore, it was important that FDA not be able to grant itself unlimited extensions. One comment stated that extensions should be justified by a publicly available record, that they should be granted for periods of 90 days, and that the total maximum extension should not be for more than 270 days.

FDA does not agree that it is likely that it will not complete health claim rulemakings in a timely manner. As stated previously, FDA considers these proceedings to be a high priority, and it does not anticipate failing to meet the timeframes. However, the agency recognizes that, on occasion, cause may exist for extending the period in which it arrives at a final rule. FDA agrees with the comment that stated that any extensions should be justified with a publicly available record. In fact, FDA stated in the proposal that it would proceed in this manner (62 FR 12579 at 12581).

FDA also finds merit in the argument advanced by the comments that the agency should not be able to grant itself unlimited extensions. If the agency were to adopt a regulation that left it free to do so, FDA would not have adequately addressed the concern expressed by the court in *NHA* v. *Shalala* that the agency not prohibit presumptively valid, nonmisleading health claims for an indefinite period (slip op. at 10).

FDA agrees with the comment that stated that extensions be granted for 90 days. Consequently, the agency has modified proposed § 101.70(j)(4)(ii) to provide that FDA may extend the comment period for a period of no more than 90 days.

FDA also agrees with the comment that suggested that the agency limit the number of extensions that it grant itself. FDA has decided that it should be able to grant itself two extensions rather than three. After one extension, the agency will have had a year to finalize the health claim proposal. The agency's experience has been that it has been able to resolve all issues that have arisen in health claim proceedings in that amount of time. If the agency is unable to resolve any issue within a year, it will likely be because significant scientific agreement with respect to that issue simply does not exist. In such circumstances, the appropriate course of action may be to deny authorization for claims about the substance-disease relationship, or about some aspect of the substance-disease relationship, in question. FDA has modified proposed § 101.70(j)(4)(ii) to reflect the agency's determination to limit itself to two 90-day extensions.

III. Analysis of Impacts

A. Economic Impact

In the proposal, FDA stated that it had examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act. The agency found that the proposed rule was not a significant regulatory action under the Executive Order, and that it would not have a significant economic impact on a substantial number of small entities. FDA received no comments on these conclusions, and, therefore, finds no basis or reason to modify them.

B. Environmental Impact

FDA determined under 21 CFR 25.24(a)(8) that the proposed rule was of a type that did not individually or cumulatively have an effect on the human environment. FDA received no comments on this determination and, therefore, the agency is confirming this conclusion in this final rule.

IV. Paperwork Reduction Act

In the proposal, FDA tentatively concluded that the proposed rule contained no reporting, recordkeeping, labeling, or other third party disclosure requirements, and that there were no ''information collection'' requirements necessitating clearance by the Office of Management and Budget. FDA received no comments on this tentative conclusion. Therefore, FDA concludes that this rule imposes no paperwork burden.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.70 is amended by adding new paragraph (j)(4) to read as follows:

§ 101.70 Petitions for health claims.

* * * * *

(j) * * *

(4)(i) Within 270 days of the date of publication of the proposal, FDA will publish a final rule that either authorizes use of the health claim or

explains why the agency has decided not to authorize one.

(ii) For cause, FDA may extend, no more than twice, the period in which it will publish a final rule; each such extension will be for no more than 90 days. FDA will publish a notice of each extension in the **Federal Register**. The document will state the basis for the extension, the length of the extension, and the date by which the final rule will be published.

Dated: May 15, 1997.

William B. Schultz,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–13380 Filed 5–21–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 96P–0338]

Food Labeling: Health Claims; Soluble Fiber from Certain Foods and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to authorize the use, on food labels and in food labeling, of health claims on the association between soluble fiber from psyllium husks and reduced risk of coronary heart disease (CHD). FDA is proposing this action in response to a petition filed by the Kellogg Co. (the petitioner). The agency has tentatively concluded that, based on the totality of publicly available scientific evidence, soluble fiber from psyllium husk, similar to beta (β)-glucan soluble fiber from whole oats, when included as part of a diet low in saturated fat and cholesterol, may reduce the risk of CHD by lowering blood cholesterol levels. Therefore, the agency is proposing to amend the regulation that authorized a health claim on soluble fiber from whole oats and the risk of CHD to include soluble fiber from psyllium husks.

DATES: Written comments by August 5, 1997. The agency is proposing that any final rule that may issue based upon this proposal become effective upon its publication.

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

FOR FURTHER INFORMATION CONTACT: Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5916.

SUPPLEMENTARY INFORMATION:

I. Background

The Nutrition Labeling and Education Act of 1990

On November 8, 1990, the President signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535). This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the most notable aspects of the 1990 amendments was that they confirmed FDA's authority to regulate health claims on food labels and in food labeling.

In the **Federal Register** of January 6, 1993 (58 FR 2478), FDA adopted a final rule that implemented the health claim provisions of the act (hereinafter referred to as the 1993 health claims final rule). In that final rule, FDA adopted § 101.14 (21 CFR 101.14), which sets out the rules for the authorization and use of health claims. The agency also adopted § 101.70 (21 CFR 101.70), which establishes a process for petitioning the agency to authorize health claims about a substance-disease relationship (§ 101.70(a)) and sets out the types of information that any such petition must include (§ 101.70(d)). These regulations became effective on May 8, 1993.

In addition, FDA conducted an extensive review of the evidence on the 10 substance-disease relationships listed in the 1990 amendments. As a result of its review, FDA has authorized claims that relate to 8 of these 10 relationships.

In its review of the relationship between dietary fiber and cardiovascular disease (CVD), the agency reviewed all relevant scientific evidence on dietary fiber and its effects on serum cholesterol. The agency started by examining the conclusions and recommendations of the pertinent Federal Government reviews on this topic area: the 1988 ''Surgeon General's Report on Nutrition and Health'' (the Surgeon General's report) (Ref. 3) and the 1989 Food and Nutrition Board, National Academy of Sciences' (FNB/NAS) ''Diet and Health'' (Ref. 4). These two reports (Refs. 3 and 4) provided a comprehensive review of the role of a broad range of nutrients, including dietary fiber, in the development of a number of chronic diseases, including heart disease. Because the FNB/NAS and Surgeon General's report were done independently but concurrently, taken together, they provide an authoritative picture of the state of scientific opinion at the time that they were published in 1988 and 1989. Therefore, the agency began its review of the dietary fiber evidence with studies that had been published since 1988. This evidence included studies on all fibers and did not focus on any particular individual fibers. While the agency denied the use in food labeling of health claims relating total dietary fiber to reduced risk of CVD (58 FR 2552), it authorized a health claim relating diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products that contain dietary fiber (particularly soluble fiber) to a reduced risk of CHD, one of the most common, most frequently reported, and most serious forms of CVD.

In denying the dietary fiber and CVD health claim, the agency stated that it is difficult to determine the relationship between dietary fiber and heart disease because dietary fiber is a diverse group of chemical substances that may be associated with different physiological functions (58 FR 2552 at 2572). Chemically and physiologically, cellulose, lignin, hemicellulose, pectin, and alginate (all relatively purified fiber types) behave differently. Likewise, wheat bran, oat bran, and rice bran (all heterogeneous mixtures of fibers) are not similar in composition. The agency also noted that it is very difficult to chemically analyze dietary fiber components, and that, consequently, it is hard to correlate the role of specific fiber components to health effects.

Based on its review of numerous authoritative documents, including Federal Government reports and recent research on dietary fiber and CHD, and on its consideration of comments received in response to the proposed rule entitled ''Health Claims; Dietary Fiber and Cardiovascular Disease'' (56 FR 60582, November 27, 1991) (hereinafter referred to as the 1991 dietary fiber and CVD proposal), FDA concluded that the publicly available scientific evidence supported an association between diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products (i.e., foods that are low in saturated fat and cholesterol and that are good sources of dietary fiber) and reduced risk of heart disease (58 FR 2552 at 2572). The agency further stated that, although the specific roles of the numerous potentially protective substances in such plant foods were not yet understood, populations with diets rich in these foods experience many health advantages, including lower rates of heart disease. The agency noted, however, that there was no scientific agreement as to whether the observed protective effects against heart disease were the result of the combination of nutrient components of the foods, including soluble fiber; of the other components of soluble fiber-rich diets (for example, potassium and magnesium); of the displacement of saturated fat and cholesterol from the diet; or of nonnutritive substances in these foods.

For all these reasons, the agency stated that the fact that these foods contain dietary fiber, particularly soluble fiber, could serve as a useful marker for identifying those fruits, vegetables, and grain products that,

when added to diets low in saturated fat and cholesterol, may help in reducing blood low density lipoprotein (LDL)-cholesterol levels (58 FR 2552 at 2572). Thus, the agency authorized a health claim in § 101.77 (21 CFR 101.77) on the association between diets low in saturated fat and cholesterol and high in vegetables, fruit, and grain products that contain soluble fiber and a reduced risk of heart disease.

In the 1993 dietary fiber and CVD final rule, in response to a comment regarding the apparent hypocholesterolemic properties of specific food fibers, e.g., oats, FDA agreed that the effectiveness of naturally occurring fibers in foods may be documented for specific food products (e.g., oat brans meeting specified parameters) (58 FR 2552 at 2567). Further, the agency stated that if manufacturers could document, through appropriate studies, that dietary consumption of the soluble fiber in their particular food has the effect of lowering LDL-cholesterol, and has no adverse effects on other heart disease risk factors (e.g., high density lipoprotein (HDL)-cholesterol), they should petition for a health claim for their particular product.

In the **Federal Register** of January 23, 1997, FDA published a final rule on the relationship between soluble fiber from whole oats and reduced risk of coronary heart disease (the soluble fiber from whole oats final rule), § 101.81 (21 CFR 101.81) (62 FR 3584 and modified at 62 FR 15343, March 31, 1997). In that document, the agency concluded that the type of soluble fiber in whole oats, β-glucan soluble fiber, is the primary component responsible for the hypocholesterolemic properties associated with consumption of whole oat products as part of a diet that is low in saturated fat and cholesterol (62 FR 3584 at 3585). The agency based its conclusions on the totality of publicly available evidence, taking into account evidence showing that consumption of β-glucan soluble fiber from whole oats has the effect of lowering blood total- and LDL-cholesterol in both humans and animals (62 FR 3584 at 3586).

The agency also acknowledged the likelihood that consumption of β-glucan soluble fiber from sources other than whole oats, as well as that from certain other non β-glucan soluble fibers, will affect, as part of an appropriate diet, blood lipid levels (62 FR 3584 at 3587). Although the agency considered structuring the final rule as one on ''soluble fiber from certain foods'' and the risk of CHD to allow flexibility in expanding the claim to other sources of soluble fiber, it stated that it was premature to do so inasmuch as the agency had not reviewed the totality of evidence on other, non-whole oat sources of soluble fiber. However, FDA structured § 101.81 in a way that, while the regulation covered β-glucan soluble fiber from whole oats, would allow it to be amended as evidence becomes available to support the use of the claim for other sources of soluble fiber.

The present rulemaking is in response to a manufacturer's health claim petition on the relationship between soluble fiber from psyllium and the risk of heart disease.

II. Petition for Health Claim on Psyllium and Reduced Risk of CHD

A. Background

On June 12, 1996, the Kellogg Co. submitted a petition to FDA requesting that the agency authorize a health claim on the relationship between consumption of soluble fiber from psyllium (specifically from psyllium husks) and the risk of CHD (Ref. 1). On September 18, 1996, the agency sent the petitioner a letter stating that it had completed its initial review of the petition, and that the petition would be filed in accordance with section 403(r)(4) of the act (21 U.S.C. 343(r)(4)) (Ref. 2). In this document, the agency will consider whether a health claim on this nutrient-disease relationship is justified under the standard in section 403(r)(3)(B)(i) of the act and in § 101.14(c) of FDA's regulations. The following is a review of the health claim petition.

B. Preliminary Requirements

1. The Substance Is Associated With a Disease for Which the U.S. Population Is at Risk

The regulations authorizing claims on dietary saturated fat and cholesterol and risk of CHD (§ 101.75 (21 CFR 101.75)); fruits, vegetables, and grain products that contain soluble fiber and risk of CHD (§ 101.77); and soluble fiber from whole oats and risk of CHD (§ 101.81) establish that CHD is a disease for which the U.S. population is at risk. In adopting those regulations, FDA stated that CHD remains a major public health problem, the number one cause of death in the United States. Despite the decline in deaths from CHD over the past 30 years, this disease is still exacting a tremendous toll in morbidity and mortality (Refs. 3 through 5). There are more than 500,000 deaths each year for which CHD is an underlying cause, and another 250,000 deaths for which CHD is a contributing cause. About 20 percent of American adults ages 20 to 74 years have blood total cholesterol levels in the ''high'' category (total cholesterol greater than or equal to (≥) 240 milligrams (mg) per (/) deciliter (dL) or LDL-cholesterol ≥160 mg/dL) (Ref. 6). Another 31 percent have ''borderline'' cholesterol levels (total cholesterol between 200 to 239 mg/dL). Therefore, based on these facts as presented in §§ 101.75, 101.77, and 101.81, FDA tentatively concludes that the requirement in § 101.14(b)(1) has been met.

2. The Substance is a Food

Psyllium is a harvestable grain from plants of the *Plantago* genus (Ref. 1, p. 5–6). Different types of psyllium are available, depending on the growing region. It is primarily cultivated in France, Spain, and India, with some small quantities grown in the American Southwest. Psyllium husk (also known as psyllium seed husk), which comes from the dried coat of the psyllium seed, is used as a food or food component in a number of foods in the United States (Ref. 1, p. 9–11) and is the source of psyllium soluble fiber that is the subject of the petition. Psyllium husk is a concentrated source of soluble fiber and contributes certain technical effects (e.g., as a stabilizer) that are retained when it is consumed at levels necessary to justify the petitioned claim.

Therefore, FDA tentatively concludes that the substance satisfies the preliminary requirements of § 101.14(b)(3)(i).

3. The Substance Is Safe and Lawful

The petitioner has also submitted a petition requesting that FDA affirm that the use of psyllium husk in grain-based foods is generally recognized as safe (GRAS) (55 FR 4481, February 8, 1990). The agency notes that this GRAS affirmation petition (GRASP 0G0357) is still under review, and that authorization of a health claim should not be interpreted as affirmation that the petitioned uses of psyllium are GRAS. Such a determination can be made only after the agency has completed its review of the GRAS petition. A preliminary review of the GRAS affirmation petition, however, reveals that it contains significant evidence supporting the safety of the use of this substance at the levels necessary to justify a health claim.

In its GRAS affirmation petition, the petitioner relied heavily on the conclusions about the safety of psyllium by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB) (Ref. 1, pp. 12–17). In its 1993 report entitled ''The Evaluation of the Safety of Using Psyllium Husk as a Food Ingredient,'' LSRO reviewed and

evaluated published data, unpublished studies that were in press at that time, and other information and data. Based on this review, LSRO concluded that:

> There is no evidence in the available information on psyllium that demonstrates or suggests reasonable grounds to suspect a hazard to the public when it is used in a number of food categories and at levels of addition that would result in total consumption of as much as 25 g/day of psyllium. However, it is not possible to determine without additional data whether a significant increase in consumption above 20 to 25 g/day would constitute a dietary hazard.

(Ref. 31, p. 57.) The agency is not prepared to disagree with LSRO's conclusions on the safety of psyllium husk.

The agency points out, however, that some concerns about the safety of psyllium do exist. For example, available information suggests that long-term exposure to high levels of psyllium husk may enhance epithelial cell proliferation in the gastrointestinal tract. Rats consuming an elemental diet containing 30 percent fiber supplement, of which 10 percent was Ispaghula (psyllium), had increased cell proliferation in the stomach, distal small intestine, and colon when compared to rats consuming an elemental diet with no fiber supplement (Ref. 36). There is no agreement in the scientific community, however, whether such an increase in cell proliferation is related to an adverse health effect (Ref. 37). FDA requests comments on whether enhanced proliferation of gastrointestinal tract epithelial cells as a result of long-term exposure to psyllium husk is of concern, and whether it would provide a basis for not authorizing a claim.

The agency is also aware that psyllium husk can cause allergic reactions in some people, such as health care professionals, who regularly dispense psyllium containing products in the course of their work. Information provided by the petitioner (Ref. 32) shows that there are at least 13 protein fractions present in psyllium husk preparations. Some of these protein fractions cross react with sera obtained from individuals who experienced allergic reactions to psyllium-containing foods. The information also shows that refinement of psyllium husk preparations, i.e., increasing the purity of psyllium husk, by mechanical sieving can reduce the level of antigenic protein fractions (Ref. 32).

Because of concerns regarding the allergenic potential of products derived from psyllium seed, FDA is proposing specifications for the purity of the psyllium husk that is the subject of this health claim proposal to reduce the potential for allergic reactions to foods containing added psyllium. These specifications are based on information provided in the petition (Ref. 32) and on the specifications used by the petitioner (Ref. 1). FDA requests comments on the adequacy of these proposed specifications to reduce the allergenic potential of psyllium husk consumed as a component of food. Are other steps, such as requiring that a psyllium-containing product that bears a health claim declare on its prinicipal display panel that psyllium is present in the food, necessary?

Additionally, the agency is aware of the potential for gastrointestinal obstruction to occur following consumption of psyllium husk in the absence of sufficient liquid to ensure thorough hydration. However, the 1993 report by LSRO noted that reports of gastrointestinal obstruction have been associated almost exclusively with consumption of bulk laxatives without proper hydration (Ref. 31). Moreover, LSRO stated that there have been no such reports associated with the consumption of psyllium-containing cereals consumed with milk. It also noted that there are no data regarding possible alimentary tract obstruction that could be associated with consumption of psyllium-containing products such as poptarts, waffles, breads, and other foods that may be consumed without a liquid (Ref. 31). LSRO stated that the moderate amount of psyllium in these products would not be expected to cause gastrointestinal obstruction, and that any such possibility would be reduced by a suitable suggestion that these products be consumed with fluids (Ref. 31). The agency is asking for comments on whether psyllium-containing foods should carry a statement advising that the product be consumed with liquids, or whether the potential for blockage is not an issue of concern for psyllium-containing food.

Based on the totality of the evidence, the agency is not prepared, at this time, to take issue with the petitioner's view that the use of psyllium husk is safe and lawful. Although FDA tentatively concludes that the petitioner has provided evidence that satisfies the requirement in § 101.14(b)(3)(ii) that use of psyllium husk at the levels necessary to justify a claim is safe and lawful, the agency requests comment on this tentative conclusion. The agency recognizes that, should this proposed health claim be authorized, there may be an increase in the consumption of psyllium. Therefore, the agency also requests comments on actions, if any, that may be necessary to ensure that longterm consumption of psyllium will be at safe levels, such as establishing a maximum psyllium content that foods may contain to bear the health claim or limiting the kinds of foods that can contain psyllium and bear a claim.

III. Review of Scientific Evidence

A. Basis for Evaluating the Relationship Between Soluble Fiber from Psyllium and CHD

In the 1991 dietary fiber and CVD proposal, the agency set forth the basis for the relationship between dietary fiber and CVD (56 FR 60582 at 60583). In that document, the agency stated that there are many risk factors that contribute to the development of CVD, and specifically CHD, one of the most serious forms of CVD and the leading cause of disability. The agency also stated that there is general agreement that elevated blood cholesterol levels are one of the major ''modifiable'' risk factors in the development of CVD and, more specifically, CHD.

The Federal Government and others who have reviewed the matter have concluded that there is substantial epidemiologic evidence that high blood levels of total cholesterol and LDL-cholesterol are a cause of atherosclerosis (inadequate circulation of blood to the heart due to narrowing of the arteries) and represent major contributors to CHD (56 FR 60582 at 60583, Refs. 3 through 5). Factors that decrease total cholesterol and LDL-cholesterol will also tend to decrease the risk of CHD. High intakes of saturated fat and, to a lesser degree, of dietary cholesterol are associated with elevated blood total and LDL-cholesterol levels (56 FR 60727 at 60728, November 27, 1991). Thus, it is generally accepted that blood total cholesterol and LDL-cholesterol levels can influence the risk of developing CHD, and, therefore, that dietary factors affecting blood total cholesterol levels affect the risk of CHD (Refs. 3 through 5).

When considering the effect that the diet or components of the diet have on blood (or serum) lipids, it is also important to consider the effect that these factors may have on blood levels of high density lipoprotein-cholesterol (HDL-cholesterol). HDL-cholesterol is involved in the regulation of cholesterol transport out of cells and to the liver, from which it is ultimately excreted (Refs. 3 and 33). Therefore, HDL-cholesterol has a protective effect in the body by helping to reduce the risk of CHD.

For these reasons, FDA limited its review of the relationship between soluble fiber from the psyllium husk, hereinafter referred to as ''psyllium,'' and CHD to effects of dietary intake of this substance on blood lipid levels and on the risk of developing CHD. The agency based its evaluation of the relationship between consumption of this substance and CHD on changes in blood total cholesterol, LDL-cholesterol, and HDL-cholesterol, resulting from dietary intervention with soluble fiber from psyllium and with psyllium-containing products. This focus is consistent with that used by the agency in response to the 1990 amendments in deciding on the dietary saturated fat and cholesterol and CHD health claim, § 101.75 (56 FR 60727 and 58 FR 2739); the fruits, vegetables, and grain products and CHD claim, § 101.77 (56 FR 60582 and 58 FR 2552); and the soluble fiber from whole oats and CHD claim, § 101.81 (61 FR 296 and 62 FR 3584).

B. Review of Scientific Evidence

1. Evidence Considered in Reaching the Decision

The petitioner submitted scientific studies evaluating the relationship between soluble fiber from psyllium, consumed as a food and as an ingredient in foods, and serum lipid levels (Ref. 1). These studies were conducted between 1965 and 1996. The petition included tables that summarized the outcome of those studies and a summary of the evidence. Consistent with the approach taken in the dietary fiber/CVD proposed rules, the agency began its review by considering those psyllium studies that were published since 1988 (date of publication of the Surgeon General's report). In addition, in its review of the petition, the agency considered the conclusions of two LSRO reports (Refs. 7 and 8) relative to studies involving psyllium.

2. Criteria for Selection of Human Studies

The criteria that the agency used to select pertinent studies were that the studies: (1) Present data and adequate descriptions of the study design and methods; (2) be available in English; (3) include estimates of, or enough information to estimate, soluble dietary fiber intakes; (4) include direct measurement of blood total cholesterol and other blood lipids related to CHD; and (5) be conducted in persons who represent the general U.S. population (adults with blood total cholesterol levels less than (<) 300 mg/dL).

In selecting human studies for review, the agency excluded studies that were published in abstract form because they lacked sufficient detail on study design and methodologies, and because they lacked necessary primary data. Studies using special population groups, such as insulin-dependent diabetics, individuals with very high serum cholesterol (mean greater than 300 mg/dL), individuals taking lipid-lowering medication during treatment periods, children with hypercholesterolemia, and persons who had already experienced a myocardial infarction, were excluded because of questions about their relevance to the general healthy U.S. population. Studies in which psyllium was tested as part of a mixture of other soluble fibers, e.g., oat bran, were also excluded from review because it was not possible to evaluate the influence of psyllium alone on risk factors for heart disease. These criteria are consistent with those that the agency used to evaluate the relationship between other substances and CHD.

3. Criteria for Evaluating the Relationship Between Soluble Fiber from Psyllium and CHD

FDA generally applied the same criteria in evaluating studies on the relationship between soluble fiber from psyllium and CHD that it used in evaluating studies on the relationship between dietary fiber and CVD in the 1991 proposed rule (56 FR 60582 at 60587) and in the January 1996 proposed rule on whole oats and CHD (61 FR 296). The criteria that the agency used in evaluating the studies for this rulemaking include: (1) Reliability and accuracy of the methods used in nutrient intake analysis, including measurements of total dietary soluble fiber and total dietary fiber; (2) estimates of intake of saturated fat and cholesterol; (3) available information on the soluble fiber content of the psyllium test products and control food; (4) measurement of study endpoints (i.e., total cholesterol, LDL-cholesterol, and HDL-cholesterol); and (5) general study design characteristics.

The general study design characteristics for which the agency looked included randomization of subjects, appropriateness of controls, selection criteria for subjects, attrition rates (including reasons for attrition), potential for misclassification of individuals with regard to dietary intakes, presence of recall bias and interviewer bias, recognition and control of confounding factors (for example, monitoring body weight and control of weight loss), appropriateness of statistical tests and comparisons, and statistical power of the studies. The agency considered whether the intervention studies that it evaluated had been of long enough duration to reasonably ensure stabilization of blood lipids (greater than or equal to 3 weeks duration). Finally, the agency considered it highly desirable if the available information on a study included information on total dietary soluble fiber content of baseline, treatment, and control diets and on the nutrient intakes of the subjects during the course of the study.

C. Review of Human Studies

FDA has done a comprehensive review of 21 human studies on psyllium (Refs. 9 through 28 and 30) that were submitted with the petition and met the forementioned criteria for selection (Ref. 35). Of these, the agency gave particular weight to seven studies (Table 1 of this document) (Refs. 14, 15, 16, 19, 23, 24, and 30) that were well controlled, reported intakes of saturated fat and cholesterol, and avoided problems associated with small sample size, lack of placebo control, lack of blinding, and other design problems. The studies listed in Table 1 also had run-in periods of 4 or more weeks duration before the treatment period. During the run-in period, subjects consumed a low saturated fat and cholesterol diet without psyllium or placebo to allow time for serum lipid levels to stabilize to the change in dietary intake. Three of the studies in Table 1 were randomized, double blind, placebo-controlled, parallel trials (Refs. 14, 15, and 19). One study was a randomized, double blind, placebo-controlled, crossover trial (Ref. 16), and three studies were randomized, single blind, placebo-controlled, crossover trials (Refs. 23, 24, and 30).

Five of the studies (Refs. 14, 15, 19, 23, and 24) in Table 1 evaluated the effect of psyllium on serum lipid levels in subjects consuming a Step 1 diet (Ref. 5) (i.e., a diet with no more than 30 percent of calories from total fat, less than 10 percent calories from saturated fat, and less than 300 mg cholesterol daily,) and one study (Ref. 30) included psyllium as part of a Step 2 diet (i.e., a diet with no more than 30 percent of calories from total fat, <7 percent of calories from saturated fat, and <200 mg/day (d) cholesterol). One study (Ref. 16) evaluated the effects of psyllium in subjects consuming their usual diets. The source of psyllium in three studies (Refs. 14, 16, and 19) was a bulk laxative. Subjects mixed the psyllium with a liquid (usually water) and consumed it before meals. The placebo in these studies was cellulose.

Four studies (Refs. 15, 23, 24, and 30) incorporated psyllium into breakfast cereals or a variety of foods (e.g., breads,

cereal, pasta). In these studies, the placebo controls were the same or similar foods that did not contain psyllium (e.g., breads, cereal, pasta).

The level of psyllium consumed in the 7 studies ranged from 3.4 grams (g)/d (about 2.6 g/d soluble fiber) (Ref. 15) to about 11.6 g/d (an estimated 8 g/d soluble fiber) (Refs. 23 and 24). The duration of the treatment periods ranged from 4 weeks (Ref. 30) up to 24 weeks (Ref. 15). The male and female subjects in the 7 studies were moderately hypercholesterolemic and ranged in age from 20 to 80 years.

The results of the studies that evaluated psyllium as a supplement to the diet (Refs. 14, 16, and 19) demonstrated that the subjects consuming psyllium daily experienced significant decreases in blood total cholesterol of about 4 percent (Refs. 14 and 16) and 5 percent (Ref. 19) compared to the control group, which consumed a placebo. LDL-cholesterol decreased significantly, from about 5 percent (Ref. 16) to about 7 percent (Ref. 14), compared to the placebo control. In these three studies, the psyllium group consumed 10.2 g/d psyllium (about 7 g/d soluble fiber) (Refs. 14 and 19) or 15.3 g/d (about 10 g/d soluble fiber) (Ref. 16).

One study evaluated the effect of 3 levels of psyllium intake from foods on lipid levels in hypercholesterolemic men and women (Ref. 15). Three groups (Group 1, 2, and 3) consumed a variety of foods (cereal, bread, pasta, and snack bars) that provided 3.4 g, 6.8 g, or 10.2 g/d psyllium (Groups 1, 2, and 3, respectively) as part of a Step 1 diet for 24 weeks. A control group consumed the same foods with no psyllium. Blood total cholesterol was significantly lowered only in Group 3 from 2 to 4 percent compared to the control group. LDL-cholesterol decreased significantly in Groups 1 and 3 (i.e., about 5 percent) compared to the control group. The total soluble fiber intakes for the control and Groups 1, 2, and 3 were 7 g, 10 g, 10.6 g, and 12.4 g/d, respectively. The authors stated that the difference in soluble fiber intake among the psyllium groups was less than expected and suggested that the subjects may have partially substituted psyllium-containing foods for other foods containing soluble fiber. The results of this study suggest that there is a dose-response relationship between psyllium intake and significant reductions in CHD risk factors, but no specific level can be determined from these data because of possible problems with subject compliance in Groups 1 and 2.

The results of three other studies that tested psyllium-containing cereals (Refs. 23, 24, and 30) showed significant reductions in both blood total cholesterol (about 4 to 8 percent) and LDL-cholesterol (about 5 to 10 percent) compared to the placebo control. The subjects in these studies consumed 9.3 g/d psyllium (about 6.8 g soluble fiber) (Ref. 30) and 11 g/d psyllium (about 8 g soluble fiber) (Refs. 23 and 24).

There were no statistically significant differences between the psyllium and placebo groups in HDL-cholesterol in all but one of the studies in Table 1. In the one study (Ref. 19), post-treatment HDL-cholesterol was significantly higher in the placebo group compared to the psyllium group.

In summary, based on the totality of the evidence presented in randomized studies, consumption of psyllium helped to reduce the levels of blood total and LDL-cholesterol, and thus the risk of CHD, in subjects with moderately elevated to high blood total cholesterol who consumed either a Step 1 or Step 2 diet (low saturated fat and cholesterol) or their usual diets. Psyllium did not adversely affect HDL-cholesterol levels.

IV. Decision to Propose a Health Claim Relating Soluble Fiber from Psyllium to Reduction in Risk of CHD

The results of 7 clinical trials with psyllium that were published between 1988 and 1996 (Table 1), as discussed in section III.C, above, consistently supported that there is a relationship between consumption of soluble fiber from psyllium, as part of a diet that is low in saturated fat and cholesterol, and reduced blood cholesterol levels, which in turn may reduce the risk of heart disease. Based on this evidence, FDA has tentatively concluded that there is significant scientific agreement that the available evidence supports that this nutrient/disease relationship is valid. Thus, the agency is proposing to authorize health claims on the relationship between soluble fiber from psyllium and reduced risk of CHD.

FDA points out, however, that in preparing this document, as is its regular practice in health claim proceedings, the agency conferred with other Public Health Service (PHS) agencies with relevant expertise. These agencies have raised issues that merit consideration in this rulemaking.

First, in the seven studies that met the criteria for evaluation, three involved administration of psyllium in the form of a bulk laxative (Refs. 14, 16, and 19), and in only four of the studies was psyllium incorporated into foods (Refs. 15, 23, 24, and 30). One PHS agency raised an issue about the appropriateness of reliance on the former studies, in which psyllium was not consumed as an ingredient of conventional food.

The agency has tentatively decided that reliance on References 14, 16, and 19, in which psyllium was administered in the form of a bulk laxative, is appropriate because in these studies the psyllium was fed at mealtimes, much in the manner of a dietary supplement, and in concentrations similar to those at which psyllium was incorporated into conventional foods in References 15, 23, 24, and 30. Moreover, the effect of consuming psyllium on the risk of heart disease (i.e., about 3 to 5 percent reductions in blood total and LDL-cholesterol) observed in the studies in which this substance was consumed in conventional food, e.g., in cereal (Refs. 15, 23, 24, and 30), was similar to that seen in the studies (Refs. 14, 16, and 19) in which it was consumed as a bulk laxative. These results suggest that the form in which psyllium is consumed is not significant. However, the agency is asking for comments on whether it is appropriate to consider studies in which psyllium was fed in bulk form as evidence in evaluating this substance/disease relationship.

Second, the subject populations in the studies listed in Table 1 had borderline to high blood cholesterol levels. One PHS agency questioned the relevance of these studies to the general population, which includes individuals with normal as well as elevated blood cholesterol levels. The agency has tentatively concluded that the hypercholesterolemic study populations in the studies listed in Table 1 are relevant to the general population because, based on data from the National Health and Nutrition Examination Surveys (NHANES) III, the prevalence of individuals with elevated blood cholesterol (i.e., 200 mg/dL or greater) is high (approximately 51 percent of adults) (Ref. 6). The proportion of adults having moderately elevated blood cholesterol levels (i.e., between 200 and 239 mg/dL) was estimated to be approximately 31 percent, and the proportion of adults with high blood cholesterol levels (240 mg/dL or greater) was estimated to be approximately 20 percent (Ref. 6). It is also estimated that 52 million Americans 20 years of age and older would be candidates for dietary intervention to lower blood cholesterol (Ref. 6). The agency considers the high proportion of Americans that have elevated blood cholesterol levels (i.e., 51 percent) to make up a significant portion of the general population, thus making the subject population in the studies listed in Table 1 relevant to the general population. However, the

agency is asking for comments on this issue.

V. Decision to Propose to Amend § 101.81

As discussed in section I.B of this document, FDA authorized a claim for soluble fiber from whole oats and CHD on January 23, 1997 (62 FR 3584). In that document, the agency stated that it is very likely that soluble fiber from certain foods, in addition to β-glucan soluble fiber from whole oats, may affect serum lipid levels and thus help to reduce the risk of CHD (62 FR 3584 at 3587). The agency further stated that if a manufacturer can document, through appropriate human and laboratory studies, that a soluble fiber has an effect on blood total- and LDL-cholesterol levels, and thereby can be useful in reducing the risk of CHD, the manufacturer may petition to amend § 101.81 to include that source of soluble fiber among the food sources about which claims are authorized (62 FR 3584 at 3587 and 3588). The agency explained that it was necessary to evaluate each source of soluble fiber individually because soluble fiber is a family of very heterogeneous substances that vary greatly in their effect on the risk of CHD.

The agency tentatively concludes that the soluble fiber in psyllium, like β-glucan soluble fiber from whole oats, when consumed as part of a diet low in saturated fat and cholesterol, may help to reduce the risk of heart disease, and that a health claim describing this relationship is warranted. To this end, the agency is proposing to amend § 101.81, as discussed below, to include soluble fiber from psyllium and to broaden the subject of the claim to ''soluble fiber from certain foods'' and risk of CHD.

As discussed in the preamble to the soluble fiber from whole oats final rule, an umbrella regulation for ''soluble fiber from certain foods'' and CHD will provide flexibility for the inclusion of other food sources of soluble fiber when adequate data are provided to demonstrate that consumption of those foods may help to reduce the risk of heart disease (62 FR 3584 at 3588). Moreover, such an umbrella regulation has the advantage of minimizing consumer confusion in that the claim could not be used on the label of all foods that contain soluble fiber. Rather, the claim will be limited to those soluble fiber sources whose consumption has been demonstrated to have a relationship to the risk of CHD.

VI. Description of Modifications to § 101.81

A. Eligible Sources of Soluble Fiber

Section 101.81(c)(2)(ii) (''Nature of the substance. Eligible sources of soluble fiber'') lists the types and sources of soluble fiber that have been demonstrated to the satisfaction of FDA to have a relationship to the risk of CHD. In § 101.81(c)(2)(ii)(A), FDA lists β-glucan soluble fiber from the whole oat sources, along with the method of analysis for β-glucan soluble fiber by the Association of Official Analytical Chemists. Section 101.81(c)(2)(ii)(A)(*1*) through (c)(2)(ii)(A)(*3*) identify the whole oat sources that are eligible to bear the claim. FDA reserved § 101.81(c)(2)(ii)(B) for future use.

In this document, FDA is proposing to add new § 101.81(c)(2)(ii)(B) to specify psyllium husk as a source of soluble fiber eligible to be the subject of this claim. As discussed in section II.B.3 of this document, the agency is aware that psyllium has been associated with allergic reactions in some people, especially in health care professionals who dispense psyllium containing products in the course of their work. The petitioner stated that using psyllium with a purity of 95 percent in cereal significantly reduced the potential for allergenic responses following consumption of psyllium-containing food (Ref. 1, pp. 85–86). Information provided by the petitioner showed that psyllium husk that has a purity of 95 percent has a maximum protein content of 3 percent and total extraneous matter not to exceed 4.9 percent (i.e., 4.5 percent or less of light extraneous matter and 0.5 percent or less of heavy extraneous matter, as determined by USP methods (Ref. 34)).

In this document, the agency is proposing to adopt these specifications for psyllium husk that may be the subject of a claim. Therefore, proposed § 101.81(c)(2)(ii)(B)(*1*) states that ''to qualify for this claim, psyllium husk shall have a purity of no less than 95 percent, such that it has a 3 percent or less protein content, 4.5 percent or less of light extraneous matter, and 0.5 percent or less of heavy extraneous matter, but in no case may the combined extraneous matter exceed 4.9 percent, as determined by U.S. Pharmacopeia (USP) methods'' that are incorporated by reference (Ref. 1, pp. 5–6, and Ref. 34). The agency requests comments on whether the requirements proposed in § 101.81(c)(2)(ii)(B)(*1*) are sufficient to reduce the potential for allergenic responses in individuals sensitive to psyllium.

Proposed § 101.81(c)(2)(ii)(B)(*1*) identifies psyllium husk as the dried seed coat (epidermis) of the seed of *Plantago (P) ovata*, known as blond psyllium or Indian psyllium; *P. indica*; or *P. psyllium*. This information is consistent with that provided by the petitioner (Ref. 1, pp. 5 and 6) and the description of psyllium husk given in the U.S. Pharmacopeia's (USP) ''The National Formulary'' (Ref. 34).

In proposed § 101.81(c)(2)(ii)(B)(*2*), FDA identifies the analytical method that it intends to use to determine the amount of soluble fiber that is provided by psyllium. Because psyllium-containing food products are highly viscous in aqueous solutions and may not be easily filtered, a method for analyzing for soluble and insoluble dietary fiber from psyllium was developed by Lee et al. (Ref. 29). The assay, a modification of method No. 991.31 from ''Official Methods of Analysis of the Association of Official Analytical Chemists'' (AOAC), appeared in the *Journal of the AOAC International*, volume 78, page 724, 1995, and FDA is proposing to incorporate it by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 in this document.

B. Nature of the Food Eligible to Bear the Claim

Section 101.81(c)(2)(iii)(A) (as modified at 62 FR 15342) states that ''the food product shall include one or more of the whole oat foods from paragraph (c)(2)(ii) of this section, and the whole oat foods shall contain at least 0.75 gram (g) of soluble fiber per reference amount customarily consumed of the food'' (RACC). FDA arrived at this amount of soluble fiber by dividing an intake of 3 g/d soluble fiber from whole oats by 4 eating occasions per day (62 FR 3584 at 3592). The daily intake of 3 g soluble fiber was based on an analysis of data from a dose-response study that showed that an intake of 3 g/d β-glucan soluble fiber from whole oats was associated with a significant reduction (5 percent) in blood total- and LDL-cholesterol levels, and the results of a meta-analysis and other oat studies (61 FR 296 at 308). Based on four eating occasions per day, each serving of the eligible whole oat product would have to provide a minimum of 0.75 g per RACC as part of the requirements to qualify to bear the CHD claim.

The petitioner for the psyllium claim stated that ''the hypocholesterolemic dose-responsiveness of soluble fiber from psyllium (i.e., psyllium husk) has not been extensively studied, but there is evidence to suggest that the greater

the dose, the more pronounced the cholesterol-lowering effects will be'' (Ref. 1, p. 100). The petitioner noted LSRO's (Ref. 7) recommendations for soluble fiber intake for the general U.S. population. LSRO stated that soluble fiber should account for 25 to 30 percent of the total dietary fiber intake and recommended a daily intake of total dietary fiber intake of between 20 to 35 g/d (Ref. 7). Based on these values, an optimal intake of soluble fiber intake would range from 5 g/d to about 10.5 g/d.

The petitioner also reviewed the results of studies that evaluated the effects of different intake levels of psyllium and considered the conclusions of reviews of the literature on psyllium (Ref. 1, pp. 100 through 102). It noted that some overviews of the literature on psyllium and serum cholesterol levels have suggested intake ranges of 10 to 30 g/d of psyllium (Ref. 1, p. 100). The petitioner also noted that the results of the dose-response study by Davidson et al. (Ref. 15) showed that the group consuming 10.2 g/d of psyllium had differences of approximately 4.6 percent for LDL-cholesterol and 3.3 percent for total cholesterol when compared to controls (Ref. 1, p. 101). Based on all of the evidence, the petitioner asserted that an intake of about 7 g/d soluble fiber from 10.2 g/d psyllium may help to reduce the risk of CHD (Ref. 1, p. 102).

The petitioner suggested that, based on a daily intake level of 10.2 g of psyllium, which provides about 7 g soluble fiber, the level in a food to qualify to bear the CHD claim should be 2.5 g of psyllium per RACC (10.2 g/d divided by 4 eating occasions per day), which provides 1.7 g soluble fiber (7 g/d of soluble fiber divided by 4) per RACC. The petitioner noted that the agency has usually assumed that food consumption patterns generally reflect three meals and a snack (58 FR 2302 at 2379, January 3, 1993).

After review of data from studies submitted with the petition, the agency notes that, with the exception of the dose-response study by Davidson et al. (Ref. 15), psyllium was consumed in these studies at levels of 10 or more g/d (soluble fiber was approximately 7 g/10 g of psyllium) (see Table 1 and Ref. 35). In those placebo-controlled studies that tested an intake of psyllium of 10.2 g, the effect on serum blood lipids was consistent, i.e., blood total and LDL-cholesterol levels were significantly lowered, and HDL-cholesterol levels were not affected (Refs. 10, 11, 13 through 15, 18, 19, 22, and 26).

As noted earlier, Davidson et al. (Ref. 15) evaluated the effect of psyllium at levels of 3.4 g (Group 1), 6.8 g (Group 2), and 10.2 g (Group 3) per day from foods consumed as part of a Step 1 diet. The results of the study showed significant lowering of serum lipids in subjects consuming 10.2 g/d psyllium in food. The authors stated, however, that the subjects in the first two groups may not have complied with study protocol, thus confounding the results for them. Because of the potential for confounding in this study, the agency finds that the results of the Davidson study do not provide the information needed to determine a dose-response between the level of psyllium intake, and therefore the level of soluble fiber from psyllium, and the degree of change in blood lipid levels.

In this document, the agency is proposing to amend § 101.81 to add soluble fiber from psyllium, but it does not have the data that were available for β-glucan soluble fiber from whole oats on which to establish a dose-response based qualifying level for the amount of soluble fiber from psyllium necessary for a food to be eligible to bear the claim. As discussed above, relative to whole oat soluble fiber qualifying levels, analysis of data from a dose-response study showed that an intake of 3 g/d whole oat soluble fiber was associated with a 5 percent reduction in blood lipids (61 FR 296 at 308). In the whole oat proposal, the agency explained that a significant reduction in serum lipids of 5 percent is associated with the level that was achieved as a result of a dietary fat and cholesterol-focused intervention in the Multiple Risk Factor Intervention Trial and Lipid Research Council clinical trials (61 FR 296 at 308). The agency does not have similar data from which to determine the amount of soluble fiber from psyllium that is associated with a 5 percent reduction in serum lipids.

In the absence of such data, the agency is tentatively proposing to base the qualifying level of soluble fiber from psyllium on a total daily intake of 10.2 g (about 7 g of soluble fiber), as suggested by the petitioner. This level of intake was shown in the clinical studies to be consistently associated with significant reductions in serum lipids.

Therefore, FDA is proposing that the qualifying level of soluble fiber for foods to bear this claim be 1.7 g soluble fiber from psyllium per RACC (7 g divided by 4 eating occasions per day). The agency does not consider it necessary to propose a qualifying amount of psyllium as suggested in the petition (2.5 g) because the qualifying level of soluble fiber will determine the amount of psyllium that is required. Based on estimates from figures provided in the petition and in the studies, psyllium is about 68 percent or more soluble fiber. Therefore, 1.7 g/RACC of soluble fiber from psyllium would relate to about 2.5 g/RACC of psyllium husk. The agency is asking for comments on whether this approach for establishing a qualifying soluble fiber level for psyllium-containing products is appropriate or for data to support another qualifying level for psyllium.

Health claims help consumers to identify those products that will help them achieve a healthy diet (see, e.g., section 403(r)(3)(B)(iii) of the act). Expanding § 101.81 to include psyllium-containing foods will give consumers an opportunity to select from a wider variety of foods containing those soluble fibers that have been shown to help reduce the risk of CHD. The availability of a variety of foods, in turn, should help consumers increase their daily intake of soluble fiber.

To reflect the agency's tentative decision to propose a qualifying level of soluble fiber from psyllium that is different from that required for whole oats, the agency is proposing to amend § 101.81(c)(2)(iii)(A) (as modified at 62 FR 15342) to set out the qualifying level of soluble fiber from whole oat and psyllium foods. Therefore, in this document, proposed § 101.81(c)(2)(iii)(A) is modified to state ''[T]he food product shall include:'' followed by paragraphs (*1*) and (*2*). Paragraph (c)(2)(iii)(A)(*1*) is modified to state ''one or more of the whole oat foods from paragraph (c)(2)(ii)(A) of this section, and the whole oat foods shall contain at least 0.75 gram (g) of soluble fiber per reference amount customarily consumed of the food product.'' FDA is proposing to state in § 101.81(c)(2)(iii)(A)(*2*): ''psyllium that complies with paragraph (c)(2)(ii)(B) of this section, and the psyllium food shall contain at least 1.7 g of soluble fiber per reference amount customarily consumed of the food product.''

The agency recognizes that foods could be produced with a blend of the eligible soluble fibers listed in paragraph (c)(2)(ii) and would be willing to consider whether such foods should be eligible to bear the health claim. An example of a product that contains a blend of the eligible soluble fibers might be one that contains 75 percent of the qualifying level of β-glucan soluble fiber from whole oats and 25 percent of the qualifying level of soluble fiber from psyllium. However, the agency does not have the data on which to evaluate the relationship between consumption of foods containing both psyllium and whole oats and risk of heart disease. Although

both soluble fiber sources affect the same CHD risk factor (i.e., blood lipid levels), the agency cannot assume that foods containing a blend of these grains would have the same ability to affect blood total and LDL-cholesterol levels that a product containing either whole oats or psyllium apparently has. Therefore, if a manufacturer can demonstrate that a diet that is low in saturated fat and cholesterol that includes a blend of the eligible soluble fibers listed in § 101.81(c)(2)(ii)(A) and (c)(2)(ii)(B) has an effect on the risk of heart disease, the manufacturer should petition to amend § 101.81 further. In addition, because the qualifying level that FDA is proposing for soluble fiber from psyllium differs from that which it adopted for β-glucan soluble fiber from whole oats, the issue of an appropriate qualifying level for a blended product should be addressed in any petition.

In the preamble to the final rule in which it adopted § 101.81, the agency explained that the approach it used to derive the qualifying level of 0.75 g per RACC for whole oat products is somewhat different from the one that it used in authorizing other health claims (62 FR 3584 at 3592). The agency explained that the guiding principle for other health claims was to use the established definition for ''good source'' or ''high in,'' which characterize the amount of a nutrient based on a percentage of the Daily Reference Value (DRV) for the nutrient, in a serving of food as the qualifying level. In this way, products that qualify to bear the claim contain a meaningful level of the substance per serving compared to the recommended intake of the substance from all food sources. However, there is no DRV for soluble fiber. While the agency concluded that the approach it took to establish the qualifying level in § 101.81 was appropriate, it stated that it intends to propose to establish a DRV for soluble fiber, and, once that rulemaking is completed, assuming it results in a DRV, it would revisit the requirements in § 101.81 and propose any changes in its provisions that are necessary. For the purposes of any final rule that results from this rulemaking, the agency will also revisit the requirements of § 101.81(c)(2)(iii) if a DRV is established for soluble fiber.

C. Soluble Fiber From Certain Foods and From Eligible Food Sources

In light of the agency's tentative decision to broaden § 101.81 to include soluble fiber from psyllium, the agency is proposing to modify the section heading of § 101.81 from ''Soluble fiber from whole oats and risk of coronary heart disease'' to ''Health claims: soluble fiber from certain foods and risk of coronary heart disease.'' The statement ''soluble fiber from certain foods'' reflects the fact that the subject of the claim is no longer a specific source of soluble fiber, i.e., β-glucan from whole oats, but rather a broader class of substances that includes those sources of soluble fiber for which there is significant scientific agreement that they may help to reduce the risk of heart disease.

The statement ''soluble fiber from whole oats'' also appears in several paragraphs of § 101.81. The agency is proposing to revise this statement where it appears to state ''soluble fiber from certain foods.'' The paragraphs of § 101.81 that will be affected by this change, if it is adopted, include: (a), (a)(3), (b), (b)(2), (c)(2)(i), (c)(2)(i)(A), (d)(3), and (e).

The agency is proposing to revise the statement ''soluble fiber from whole oats'' in three paragraphs of § 101.81, paragraphs (c)(2)(i)(E), (c)(2)(i)(F), and (d)(2), to read ''soluble fiber from the eligible food sources from paragraph (c)(2)(ii) of this section.'' The agency tentatively finds that the statement ''soluble fiber from the eligible food sources * * *'' more accurately identifies the particular sources of soluble fibers that may be the subject of the claim. For example, § 101.81(c)(2)(i)(E) now specifies that the claim must not attribute any degree of risk reduction for coronary heart disease to diets low in saturated fat and cholesterol that include soluble fiber from whole oats. The eligible food sources in this proposed rule include whole oats and psyllium, so FDA is proposing to revise § 101.81(c)(2)(i)(E) to reflect the broader coverage of the claim.

The agency notes, however, that it is not proposing changes to the model claims in § 101.81(e) (modified at 62 FR 15342). In both example claims, the name of the soluble fiber source from § 101.81(c)(2)(ii) (Eligible source of soluble fiber) is provided, and, if desired, the name of the food product may be provided. For example, § 101.81(e)(1) states ''Soluble fiber from foods such as [name of soluble fiber source from section (c)(2)(ii) of this section and, if desired, the name of the food product], as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease.'' Therefore, a claim for a psyllium-containing food may state ''Soluble fiber from foods such as psyllium, as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease,'' and thus no change in § 101.81(e)(1) or (e)(2) is necessary to reflect the addition of psyllium to the list of substances eligible to bear the claim.

The agency is proposing to make some minor editorial changes in § 101.81, which have no substantive effect on this regulation.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required. This finding is based on information submitted by the petitioner in an environmental assessment prepared using the format described in 21 CFR 25.31a(b)(5).

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the economic impact of that rule on small entities. FDA finds that this proposed rule is not a significant rule as defined by Executive Order 12866 and finds under the Regulatory Flexibility Act that the proposed rule will not have a significant impact on a substantial number of small entities.

The establishment of this health claim results in benefits and in costs only to the extent that food manufacturers elect to take advantage of the opportunity to use the claim. This rule will not require that any labels be redesigned or that any product be reformulated.

Some manufacturers are currently using FDA's approved health claim regarding the benefits of fruits, vegetables, and grain products. This proposed health claim will allow them to specifically highlight the role of

soluble fiber from psyllium. The benefit of establishing this health claim is to provide for new information in the market regarding the relationship of soluble fiber from psyllium and CHD.

Costs will be incurred by small entities only if they opt to take advantage of the marketing opportunity presented by this regulation. FDA cannot predict the number of small entities that will choose to use the claim. However, no firm, including small entities, will choose to bear the cost of redesigning labels unless they believe that the claim will result in increased sales of their product. Therefore, this rule will not result in either a decrease in revenues or a significant increase in costs to any small entity. Accordingly, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commissioner of Food and Drugs certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

IX. Paperwork Reduction Act

FDA tentatively concludes that this proposed rule contains no reporting, recordkeeping, labeling, or other third party disclosure requirement. Thus, there is no ''information collection'' necessitating clearance by the Office of Management and Budget. However, to ensure the accuracy of this tentative conclusion, FDA is seeking comment on whether this proposed rule to permit health claims on the association between soluble fiber from psyllium and reduced risk of CHD imposes any paperwork burden.

X. Effective Date

FDA is proposing to make these regulations effective upon publication of a final rule based on this proposal.

XI. Comments

Interested persons may, on or before August 5, 1997, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

XII. References

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

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36. Goodlad, R. A., B. Ratcliffe, C. Y. Lee, and N. A. Wright, ''Dietary Fibre and the Gastrointestinal Tract: Differing Trophic Effects on Muscle and Mucosa of the Stomach, Small Intestine, and Colon,'' *European Journal of Clinical Nutrition*, 49(Suppl. 3):S178–S181, 1995.

37. Wasan, H. S. and R. A. Goodlad, ''Fibre-supplemented Foods May Damage Your Health, Lancet, 348:319–320, 1996.

List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.81 is amended by revising the section heading, the heading for paragraphs (a) and (b), and paragraphs (a)(3), (b)(2), (c)(2)(i) introductory text, (c)(2)(i)(A), (c)(2)(i)(E), (c)(2)(i)(F), (c)(2)(iii)(A), (d)(2), (d)(3), and (e), and by adding paragraph (c)(2)(ii)(B) to read as follows:

§ 101.81 Health claims: Soluble fiber from certain foods and risk of coronary heart disease (CHD).

(a) *Relationship between diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods and the risk of CHD.*

* * * * *

(3) Scientific evidence demonstrates that diets low in saturated fat and cholesterol may reduce the risk of CHD. Other evidence demonstrates that the addition of soluble fiber from certain foods to a diet that is low in saturated fat and cholesterol may also help to reduce the risk of CHD.

(b) *Significance of the relationship between diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods and the risk of CHD.*

* * * * *

(2) Intakes of saturated fat exceed recommended levels in the diets of many people in the United States. One of the major public health recommendations relative to CHD risk is to consume less than 10 percent of calories from saturated fat and an average of 30 percent or less of total calories from all fat. Recommended daily cholesterol intakes are less than 300 mg per day. Scientific evidence demonstrates that diets low in saturated fat and cholesterol are associated with lower blood total and LDL-cholesterol levels. Soluble fiber from certain foods, when included in a low saturated fat and cholesterol diet, also helps to lower blood total and LDL-cholesterol levels.

(c) * * *

(2) * * *

(i) Nature of the claim. A health claim associating diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods with reduced risk of heart disease may be made on the label or labeling of a food described in paragraph (c)(2)(iii) of this section, provided that:

(A) The claim states that diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods ''may'' or ''might'' reduce the risk of heart disease.

* * * * *

(E) The claim does not attribute any degree of risk reduction for CHD to diets that are low in saturated fat and cholesterol and that include soluble fiber from the eligible food sources from paragraph (c)(2)(ii) of this section; and

(F) The claim does not imply that consumption of diets that are low in saturated fat and cholesterol and that include soluble fiber from the eligible food sources from paragraph (c)(2)(ii) of this section is the only recognized means of achieving a reduced risk of CHD.

(ii) * * *

(B)(*1*) Psyllium husk from the dried seed coat (epidermis) of the seed of *Plantago (P.) ovata*, known as blond psyllium or Indian psyllium; *P. indica*; or *P. psyllium*. To qualify for this claim, psyllium shall have a purity of no less than 95 percent, such that it contains 3 percent or less protein, 4.5 percent or less of light extraneous matter, and 0.5 percent or less of heavy extraneous matter, but in no case may the combined extraneous matter exceed 4.9 percent, as determined by U.S. Pharmacopeia (USP) methods described in USP's ''The National Formulary,'' USP 23, NF 18, p. 1341, (1995), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the U.S. Pharmacopeial Convention, Inc., 12601 Twinbrook Pkwy., Rockville, MD 20852, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC;

(*2*) FDA will determine the amount of soluble fiber that is provided by psyllium by using a modification of the Association of Official Analytical Chemists' (AOAC's) method for soluble dietary fiber (991.43) described by Lee et al., ''Determination of Soluble and Insoluble Dietary Fiber in Psyllium-containing Cereal Products,'' *Journal of the AOAC International*, 78(No. 3):724–729, 1995, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC;

(iii) * * *

(A) The food product shall include:

(*1*) One or more of the whole oat foods from paragraph (c)(2)(ii)(A) of this

section, and the whole oat foods shall contain at least 0.75 gram (g) of soluble fiber per reference amount customarily consumed of the food product; or

(*2*) Psyllium that complies with paragraph (c)(2)(ii)(B) of this section, and the psyllium food shall contain at least 1.7 g of soluble fiber per reference amount customarily consumed of the food product;

* * * * *

(d) * * *

(2) The claim may state that the relationship between intake of diets that are low in saturated fat and cholesterol and that include soluble fiber from the eligible food sources from paragraph (c)(2)(ii) of this section and reduced risk of heart disease is through the intermediate link of ''blood cholesterol'' or ''blood total- and LDL-cholesterol;''

(3) The claim may include information from paragraphs (a) and (b) of this section, which summarize the relationship between diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods and coronary heart disease and the significance of the relationship;

* * * * *

(e) *Model health claim*. The following model health claims may be used in food labeling to describe the relationship between diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods and reduced risk of heart disease:

(1) Soluble fiber from foods such as [name of soluble fiber source from paragraph (c)(2)(ii) of this section and, if desired, the name of the food product], as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease.

(2) Diets low in saturated fat and cholesterol that include soluble fiber from [name of soluble fiber source from paragraph (c)(2)(ii) of this section and, if desired, the name of the food product] may reduce the risk of heart disease.

Dated: May 15, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–13379 Filed 5–21–97; 8:45 am]

BILLING CODE 4160–01–F

Note: The following table will not appear in the Code of Federal Regulations.

TABLE 1.—SUMMARY OF CLINICAL TRIALS WITH HYPERCHOLESTEROLEMICS: PSYLLIUM AND CORONARY HEART DISEASE

Study	Duration Treatment	Number of Subjects	Supplements (Psyllium, Placebo) Soluble Fiber g/d	Diet Intake of groups: Sat fat % E; CHOL mg/d	Magnitude of PSY Effect*	Magnitude of Placebo Effect
Levin et al. (Ref. 19)	Base: 8-wk Step 1; Tx: 16-wk Step 1+supplement	PSY: 30 (26 men) Pla: 28 (23 men)	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*Sat fat*: PSY-6.7%; C- 6.3% *CHOL*: PSY-166 mg; C-135 mg	*CHOL*: -13 mg/dL (5.6%) *LDL-C*: -13 mg/dL (8.6%)	CHOL: 0; LDL-C -2.2%; HDL-C: ~+6% (sig from PSY)
Bell et al. (Ref. 14)	Base: 12-wk Step 1; Tx: 8-wk Step 1+supplement	PSY: 40 (20 men) Pla: 35 (18 men)	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*Sat fat*: PSY- 8-10%; C- 7.7-8.6% *CHOL*: PSY-168 mg; C-206 mg	*CHOL*: -9 mg/dL (4.2%) *LDL-C*: -12 mg/dL (7.7%)	CHOL: 0; LDL-C -0.2%; HDL-C no sig dif (grps)
Davidson et al. (Ref. 15)	Base: 8-wk Step 1; Tx: 24-wk Step 1 + PSY or control food (3 servings/d)	PSY 1 56 (31 men) PSY 2 40 (24 men) PSY 3 43 (28 men) C 59	3.4 g, 6.8 g, 10.2 g/d; incorporated into foods: C foods: no PSY PSY 1: ~2.3 g SF, PSY 2: ~.6 g; PSY 3: ~7 g	*Sat fat*: PSY- 7-8.6%; C- 7-8.6% *CHOL*: PSY 1-151 mg; PSY 2- 181; PSY 3- 169C- 145 mg	*CHOL*: -3% (PSY 3) *LDL-C*: -5% (PSY 3)	CHOL: +1.7%; LDL-C: +3% HDL-C: No sig dif (grps)
Everson et al. (Ref. 16)	Regular diet; 5-d Base; 2 40-d periods; 11-d washout; crossover	20 men	15.3 g/d bulk laxative, cellulose PSY: ~10 g SF	*Sat fat*: PSY-12%; C- 13.2 % *CHOL*: PSY-296 mg; C-274 mg	*CHOL*: -14 mg/dL (-5%) *LDL-C*: -15 mg/dL (8%)	CHOL: -1.9%; LDL-C: -2.7% HDL-C: No sig dif (grps)
Jenkins et al. (Ref. 30)	Base: 2-mo Step 2; Tx: 2 1-mo Step 2 metabolic diets, crossover, washout	12 Ss (3m/9f)	Mean intake: 9.35 g/d PSY in cereal PSY: 6.8 g SF	*Sat fat*: 4% all grps PSY: 36 mg; C: 29 mg *CHOL* PSY- 36 mg; C-29 mg	*CHOL*: -16.6 mg/dL Tx difference: 3.4% *LDL-C*: -9.3 mg/dL Tx difference: 5.1%	HDL-C: No sig dif (grps)
Stoy et al. (Ref. 23)	4-wk Step 1; Step 1 + (8x5x5 wks): Grp 1: PSY-Pla-PSY; Grp 2: Pla-PSY-Pla	23 men	Estimated 11.6 g/d PSY from cereal: ~8 g SF; Wheat cereal: ~3 g SF	*Sat fat*: PSY: 5.1% (Grp 1) and 5.1% (Grp 2) Wheat: 4.5% (Grp 1) and 5.0% (Grp 2) *CHOL*: PSY 141-165 mg Wheat: 164 mg (Grp 1), 117-170 (Grp 2)	*CHOL*: -10 mg/dL (4%) *LDL-C*: -11 mg/dL (6%)	HDL-C: No sig dif (grps)

TABLE 1.—SUMMARY OF CLINICAL TRIALS WITH HYPERCHOLESTEROLEMICS: PSYLLIUM AND CORONARY HEART DISEASE—Continued

Study	Duration Treatment	Number of Subjects	Supplements (Psyllium, Placebo) Soluble Fiber g/d	Diet Intake of groups: Sat fat % E; CHOL mg/d	Magnitude of PSY Effect*	Magnitude of Placebo Effect
Stoy et al. (Ref. 24)	4-wk Step 1; Step 1 + (8x5x5 wks): Grp 1: PSY-Pla-PSY; Grp 2: Pla-PSY-Pla	22 men	Estimated 11.6 g/d PSY from cereal: ~8 g SF; Wheat cereal: ~3 g SF	*Sat fat*: PSY: 4.8 (Grp 1) and 5.2% (Grp 2) Wheat: 4.7% (Grp 1) and 5.6% (Grp 2) *CHOL*: PSY 155-163 mg Wheat: 133 mg (Grp 1), 169-172 (Grp 2)	*CHOL*: -10 mg/dL (4%) *LDL-C*: -11 mg/dL (6%)	HDL-C: No sig dif (grps)

* Significant differences between treatment and placebo groups unless otherwise indicated.

Abbreviations Used in Table 1

C	Control
CHOL	Blood total cholesterol
d	Day
E	Energy
g	Gram
grp	Group
HDL-C	High density lipoprotein cholesterol
LDL-C	Low density lipoprotein cholesterol
m/f	Number of males, number of females
mg/dL	Milligrams per deciliter
mo	Months
oz	Ounces
Pla	Placebo
Pro	Protein
PSY	Psyllium
Sat fat	Saturated fat
SF	Soluble fiber
Sig Dif	Statistically significant difference
Step 1	≤ 30% kcals fat, 55% CHO, 15% Pro, <300 mg cholesterol
Tx	Treatment
wk	week
~	approximately
%	Percent

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federal register

Thursday
May 22, 1997

Part IX

Department of Education

34 CFR Parts 200 and 299

Elementary and Secondary Education Act General Provisions, Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 200 and 299

RIN 1810–AA82

General Provisions, Elementary and Secondary Education Act

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The U.S. Secretary of Education (the Secretary) issues final general regulations governing programs under the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (the ''Elementary and Secondary Education Act'', ''ESEA'' or the ''Act''). These regulations implement several provisions in Title XIV (General Provisions) of the Act. These regulations generally govern all programs under the Act, and establish uniform provisions to minimize burdensome differences in implementing similar statutory provisions in individual programs.

The areas that are covered by these regulations for ESEA programs are: Other applicable regulations; priorities for empowerment zones or enterprise communities in discretionary grants; the consolidation of State and local administrative funds; maintenance of effort; services to private school children and teachers; and complaint procedures. In addition, these final regulations provide further flexibility to States under Title III of the Goals 2000: Educate America Act.

EFFECTIVE DATES: These regulations take effect on June 23, 1997.

COMPLIANCE: However, affected parties do not have to comply with the information requirements in 299.11(d) until the Department of Education publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Delores Warner, Telephone: (202) 260–1941. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Internet: Delores__Warner@ed.gov

SUPPLEMENTARY INFORMATION: On October 20, 1994, the President signed into law the Improving America's Schools Act of 1994 (IASA) (Pub. L. 103–382). The IASA reauthorizes and fundamentally changes the ESEA, redesigning its programs so that they work together to support high-quality teaching and learning to help all children learn challenging material in academic areas and acquire the knowledge and skills they will need to succeed in the 21st century.

The reauthorized ESEA, including Title XIV, is designed to make it easier for programs to work with, rather than separately from, one another. In addition, the Act fosters the coordination of ESEA programs with the broader education services that children receive. For example, the reauthorized Act supports State and community reform efforts geared to challenging State academic standards, particularly those initiated or supported by the Goals 2000: Educate America Act.

The new programs are also designed to target funds to areas, schools or students with the greatest needs for assistance, and to support State and local efforts at broader educational reform. At the same time they reduce burdens and provide for needed flexibility.

Generally, in implementing the Act, the Department is issuing regulations only where absolutely necessary, or to provide increased flexibility. The regulations in Part 299 are consistent with this approach and are intended to provide support to educators at the State and local levels in their implementation of provisions in Title XIV and of the Act as a whole. Title XIV contains provisions that provide for flexibility; promote coordinated program services; authorize waivers of certain provisions to increase the quality of instruction or improve academic performance; authorize consolidated State and local plans and applications and consolidation of State and local administrative funds; and establish uniform provisions applicable to programs authorized in the ESEA.

Most of the provisions of Title XIV are not the subject of regulations. The Department has issued, separately from this regulation, non-binding guidance to help grantees better understand and implement a number of Title XIV provisions such as State consolidated plans (section 14302 of the Act), waivers (section 14401 of the Act), and the Gun-Free Schools Act (sections 14601–14603 of the Act). Copies of these guidance packages are available from Delores Warner, U.S. Department of Education, 1250 Maryland Avenue S.W., Room 4000, Portals Building, Washington, DC 20202–6110. The Department is currently preparing additional non-binding guidance addressing certain other Title XIV provisions.

On March 26, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for Title XIV in the **Federal Register** (61 FR 13324). The preamble to the NPRM included a discussion of the provisions enacted by Congress that were addressed in the NPRM.

Analysis of Comments

In response to the Secretary's invitation to comment in the NPRM, the Department received nine letters from State and local officials and various organizations. Most of the letters contained multiple comments. An analysis of the comments and the Secretary's responses to those comments is presented below.

In developing these final regulations, the Secretary has considered these comments, balancing the concerns of State and local school officials, parents, and others with the statutory purposes of Title XIV and the needs of the students, parents, and teachers to be served. In addition, the Secretary took into account the principle of only regulating where absolutely necessary. As a result of considering all of these factors, the Department has made several substantive changes to the regulations. Several clarifying and technical changes were also made to the regulations.

Subpart A—Purpose and Applicability

Section 299.2 What General Administrative Regulations Apply to ESEA Programs?

Comment: None.

Discussion: In reviewing the notice of proposed rulemaking, the Department was concerned that it be clear that the three standards of accountability that alternative State fiscal and administrative provisions have to meet under the section, are adequate to ensure that program costs are allocable to a particular ''cost objective.'' See OMB circular A–87, Attachment A subsection C.3. The three standards are that State provisions must ensure that (1) funds are used in compliance with all applicable Federal provisions, (2) costs are reasonable and necessary for operating these programs, and (3) funds are not to be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

The Department has concluded that the three standards are sufficient and, in particular, to meet the first of the three standards, alternative State provisions must, among other things, ensure that

costs are allocable to a particular cost objective. Therefore, there is no need to add a specific additional standard on the allocability of costs, but the Department has added a clarifying note after § 299.2.

Change: The Department has added a clarifying note after § 299.2.

Subpart B—Selection Criteria

Section 299.3 What Priority May the Secretary Establish for Activities in an Empowerment Zone or Enterprise Community?

Comment: One commenter stated that establishing a priority in discretionary grants for Empowerment Zones or Enterprise Communities (EZ/EC) gives an ''unfair competitive preference'' to EZ/EC communities that already receive preferential consideration in several other discretionary grant programs. The commenter believes that preferential treatment of one set of identified applicants negates the fairness of discretionary grant competitions.

Discussion: The Department often establishes priorities in grant competitions. Establishment of a priority does not eliminate the fairness or the competitive nature of a grant competition. For example, even when a ''competitive preference'' is given, a high quality application that addresses the other published criteria thoroughly may more likely be funded than an applicant qualifying for an EZ/EC preference that files a poorer quality application that does not address the other criteria well. Additionally, the use of the proposed priority is discretionary.

As a general matter, the Department believes that the general purposes of the EZ/EC communities are appropriate to support through a priority in certain competitions. The EZ/EC communities are characterized by pervasive poverty, unemployment, and general distress, and are implementing locally designed strategies for building healthy, safe and economically vibrant communities with limited resources. Thus, in certain competitions it will be appropriate to address greatest needs by concentrating limited resources on an applicant that serves an EZ/EC community.

Change: None.

Subpart C—Consolidation of State and Local Administrative Funds

Section 299.4(a) What Requirements Apply to the Consolidation of State and Local Administrative Funds?

Comment: One commenter, representing a State educational agency (SEA), recommended that regulatory language be added that specifically states that ''program funds'' may not be consolidated. The commenter believes that the specific statement would assist local educational agencies (LEAs).

Discussion: Section 14203 of the ESEA, the provision of law that the regulation implements, clearly applies only to the portion of program funds that may be used for administration. Therefore, it is not necessary to provide more detailed regulations on this point. Section 14203 requires that SEAs, in collaboration with LEAs in the State, establish procedures for responding to requests from LEAs to consolidate administrative funds, and for establishing limitations on the amount of funds that may be used for administration on a consolidated basis. As long as the State establishes reasonable provisions, including that only reasonable and necessary expenses of administering the programs properly can be incurred, the State has flexibility in establishing procedures. To the extent that LEAs have questions about these matters, SEAs have the authority to issue regulations, guidance, and procedures to address them.

Change: None.

Comment: One commenter said that the regulations would go beyond the language of the Act by specifying when and if a State can consolidate administrative funds by adding the reference to ''for administrative purposes.'' The commenter believes that it will be difficult to define ''administrative funds''. The commenter asks the Secretary to let the wording of the statute stand and eliminate the reference to ''for administrative purposes.''

Discussion: The Department believes that the regulatory language is consistent with the intent of section 14201 since this section concerns the administration of programs. The intent of the provision is to permit only SEAs with sufficient funding to support their administrative activities to consolidate ESEA administrative funds.

Change: None.

Subpart D—Fiscal Requirements

Section 299.5 What Maintenance of Effort Requirements Apply to ESEA Programs?

Comments: One commenter agreed with the proposed maintenance of effort provisions, especially with regard to the Title I program. The commenter felt that the maintenance of effort regulations are clearly stated, easy to understand, and explicit about costs that may or may not be included in calculations. The commenter also stated that requiring a level of commitment from local school districts will ensure that Title I funds benefit the students for whom they were allocated.

Discussion: None.

Change: Because § 299.5 applies to Title I, these regulations remove the existing Title I—specific maintenance of effort regulations in 34 CFR 200.64.

Subpart E—Services to Private School Students and Teachers

Section 299.6 What Are the Responsibilities for Providing Services to Children and Teachers in Private Schools?

Comment: Two commenters asked that the term ''meaningful consultation'' be clarified. One commenter was concerned that the term may not mean the same thing to public school administrators as it does to private school representatives. The second commenter was concerned that the provisions of the Education Department General Administrative Regulations (EDGAR) pertaining to consultation no longer apply. One of the commenters also noted that ''meaningful consultation'' is, however, defined in the statute in section 14503(c) of Title XIV.

Discussion: Section 14503(c) of ESEA contains specific elements of ''meaningful consultation,'' and it is not necessary to restate them in the regulations. While the EDGAR provisions on consultation are no longer applicable to these programs, the Title XIV statutory provisions regarding consultation are modeled after the EDGAR provisions, so that consultation requirements have not been diminished.

Change: None.

Comment: One commenter expressed a concern that § 299.6(c) makes the private school participation provisions in EDGAR not applicable to covered programs. Of particular interest to this commenter is § 76.659 of the EDGAR regulations, which permits publicly funded personnel to provide services in other than public facilities. The commenter recommends that the EDGAR regulation be incorporated in its entirety into Subpart E of these regulations.

Discussion: Nothing in § 299.6 precludes publicly-funded personnel, in appropriate circumstances, from providing services in non-public settings. The level of detail suggested by the commenter is not necessary for this regulation. The Department will consider whether further nonregulatory guidance on this issue is necessary.

Change: None.

Section 299.7 What are the Factors for Determining Equitable Participation of Children and Teachers in Private Schools?

Comment: One commenter asked for further explanation of the term ''equitable basis.'' The commenter wanted it made clear that LEAs must subtract administrative expenses before making an equitable distribution of the remaining funds.

Discussion: The Secretary believes that, as drafted, § 299.7(a)(2) already indicates clearly that LEAs first must take administrative expenses from the total allocation of program funds before determining ''equal expenditures.''

Change: None.

Comment: One commenter called for more clarification of the phrase ''taking into account the number and educational needs of those children and their teachers * * *,'' and ''other educational personnel'' in § 299.7(a)(1). Another commenter asked for more specific definitions of ''benefits'' and ''special needs'' as used in § 299.7(c). All of these comments raise concern about the potential for variations in interpretation at the LEA level.

Discussion: Section 299.7(b)(3) makes clear that an agency or consortium of agencies, in consultation with private school officials, makes the final determination as to what services shall be provided to private school children. If, after timely and meaningful consultation, the agency or consortium decides that private school children need services that are different from those provided to public school children, § 299.7(c) requires them to provide those different services. The Secretary believes that decisions about equitable services are best made at the local level after meaningful consultation as described in the statute, and that detailed regulations are unnecessary.

Change: None.

Comment: One commenter suggested that this section would require an LEA to assess the specific needs and educational progress of eligible private school children and teachers. The commenter believes that such an assessment would be difficult, unworkable, burdensome and viewed by ''private school operators'' with ''hostility'' as an intrusion into their operations.

Discussion: The Secretary believes that, through meaningful consultation, the LEA can work cooperatively with private school representatives to acquire adequate information to make the types of determinations required by this section. It is in the interest of private school representatives and the LEA to work in a cooperative manner to develop plans that ensure equitable services to meet the needs of private school children and their teachers.

Change: None.

Section 299.8 What are the Requirements to Ensure That Funds do not Benefit a Private School?

Comment: One commenter observed that this section does not contain a particular method for determining compliance with the section. The commenter believes that the lack of specific procedures will cause confusion and the expenditure of time and effort by LEAs in attempting to demonstrate to auditors and program monitors a district's compliance with this regulation. The commenter suggested deleting the section.

Discussion: The Secretary believes that, by using meaningful consultation and reasonable methods of administrative oversight, an LEA will be able to develop a relatively simple process for ensuring compliance with this section. This provision is similar to 34 CFR 76.658. The Secretary is reluctant to establish more specific requirements and procedures that may or may not be appropriate to fit particular local circumstances.

Change: None.

Section 299.9 What are the Requirements Concerning Property, Equipment, and Supplies for the Benefit of Private School Children and Teachers?

Comment: One commenter expressed a concern that the wording of this section is too broad and asked for greater specificity, particularly exempting ''consumable'' products from the requirement.

Discussion: These requirements are the same as those established for the Title I, Part A program at 34 CFR 200.13. There is no reason for treating ''consumable'' products differently from other supplies.

Change: None.

Subpart F—Complaint Procedures

Section 299.10 What Complaint Procedures Shall an SEA Adopt?

Comment: One commenter asked that the provision cover Title VII and the Bilingual Education Act. Three commenters asked that this provision be extended to cover other programs, outside of ESEA (e.g., the Carl D. Perkins Vocational and Applied Technology Education Act, the McKinney Homeless Assistance Act, the School to Work Opportunities Act, or Goals 2000), in addition to those listed in paragraph (b).

Discussion: The purpose of this subpart is to give the SEA the responsibility to resolve complaints where the SEA has administrative responsibilities for how a subgrantee implements the program. Because the Bilingual Education Act in Title VII is a discretionary grant program administered primarily at the LEA and Federal levels, rather than by the SEA, it is not appropriate to have SEAs establish and administer a complaint procedure. Part C of Title VII (Emergency Immigrant Education), which is State-administered, has been added to the list of covered programs. Additionally, language has been added to clarify that these procedures apply only to the State-administered portions of the Even Start programs.

Because Title XIV of ESEA, the primary subject of these regulations, applies only to programs in ESEA, these regulations were designed to fit the needs of the programs in ESEA. Once the Department has experience with the implementation of these regulations, we will consider whether they should be extended to other programs.

Change: One program has been added to the list of applicable programs, and language has been added to clarify that these procedures apply only to the State-administered portions of the Even Start programs.

Section 299.11 What Are Included in the Complaint Procedures?

Comment: Several commenters suggested that the regulations be more specific. They suggested that the regulations require the provision of specific information to parents and LEAs; include minimum time limits for resolving a complaint, and require a written decision to resolve the complaint. One commenter suggested that the regulations indicate more clearly that they apply to complaints about services to private school students as well as other matters.

Some commenters suggested that parents of eligible children be given notice that complaint procedures exist, and be provided advice on how to file complaints. A commenter further recommended that the procedures be made available in languages other than English, as appropriate.

Discussion: These regulations balance the flexibility of ESEA and the principle of regulating only when absolutely necessary with the need in certain cases to establish minimum requirements to ensure that the purposes of the statute are met. Generally, the level of detail that these commenters suggest be included in the regulations on complaint procedures goes beyond what

the Secretary considers absolutely necessary for these programs. Moreover, these matters are best left to the SEA to address after taking into account its particular circumstances. The Secretary does not think it is appropriate to prescribe further detailed specifications for the procedures. For example, although the Secretary believes that a reasonable period of time for hearing and resolving a complaint would generally be 60 to 90 days, regulating specific timelines for all complaints, no matter how detailed, does not seem necessary or appropriate.

The regulations clarify that they apply, among other things, to complaints about violations of the requirements to serve private school children and that the resolution be in writing.

On the other hand, the need for parents to be aware of the complaint procedures seems basic to ensuring proper accountability and involvement in the programs. Therefore, the Secretary has added a provision to ensure that LEAs adequately inform parents of the complaint procedures. In determining whether LEAs adequately informed parents, LEAs would be expected to make information available in languages other than English to the extent appropriate.

Change: The Secretary has added clarifying language in paragraphs (a) and (c) and added a new paragraph (d) to § 299.11 requiring that the complaint procedures include informing parents of the procedures.

Executive Order 12866

1. Assessment of Costs and Benefits

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs and benefits associated with the final regulations are minimal and to the extent there are costs, the costs result primarily from the statutory requirements and regulations determined by the Secretary to be necessary for administering these programs effectively and efficiently.

Thus, in assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not interfere unduly with State and local governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits are discussed elsewhere in this preamble under the following heading: *Analysis of Comments and Changes.*

Paperwork Reduction Act of 1995

Collection of Information: General Provisions, Elementary and Secondary Education Act: Complaint Process

1. Section 299.11(d) contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this provision to the Office of Management and Budget (OMB) for its review under that Act.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected sections of the regulations. The approval number for the information collection contained in §§ 299.10–299.12 (except for § 299.11(d)) is 1810–0591 and the approval expires 05/31/99.

2. Section 299.11(d) was added as a result of public comments, and it contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this provision to the Office of Management and Budget (OMB) for its review under the Act.

Under § 299.11(d), an SEA is required to indicate to LEAs that they must notify parents and appropriate private school officials or representatives of the complaint procedures. The likely respondents to the collection of information in the complaint process are SEAs and LEAs who will have to notify parents and the other individuals.

We estimate that the burden associated with the public notification process will amount to an additional 136,000 hours. Some 17,000 school districts will have to spend an average of eight person hours developing a notice, reproducing it, and distributing it. Some LEAs may choose to put a notification in a local newspaper; others may distribute the notification to each student or parents or private school representative or official. Our estimate is based on the latter assumption. The other option would probably save a significant amount of time reproducing and distributing the notice. Additionally, if an SEA developed a standard notice for the LEAs in its State, burden would be reduced substantially. Therefore, if LEAs develop their own notice and distribute it to each student or parent or private school representative or official, the total annual reporting and recordkeeping burden that will result from the collection of this information is likely to be 136,000 burden hours (17,000 LEAs, multiplied by eight burden hours for developing a notice, reproducing it, and distributing it). If other options are taken by the SEA or LEA, many fewer burden hours will be involved.

Organizations and individuals desiring to submit comments on the information collection requirement in § 299.11(d) should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in § 299.11(d) between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Intergovernmental Review

Some of the programs affected by these final regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an inter-governmental partnership and a strengthened federalism by relying on processes

developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

List of Subjects

34 CFR Part 200

Education of disadvantaged, Elementary and secondary education, Grant programs—education, Indians-education, Infants and children, Juvenile delinquency, Migrant labor, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 299

Administrative practice and procedure, Education, Elementary and secondary education, Grant programs—education, Private schools, Reporting and recordkeeping requirements.

Dated: May 19, 1997.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary amends Title 34 of the Code of Federal Regulations by amending Part 200 and adding a new Part 299 to read as follows:

PART 200—TITLE I—HELPING DISADVANTAGED CHILDREN MEET HIGH STANDARDS

1. The authority citation for Part 200 continues to read as follows:

Authority: 20 U.S.C. 6301–6514, unless otherwise noted.

2. Section 200.64 is amended by removing and reserving the section.

§ 200.64 [Reserved]

3. A new Part 299 is added to read as follows:

PART 299—GENERAL PROVISIONS

Subpart A—Purpose and Applicability

Sec.

299.1 What are the purpose and scope of these regulations?
299.2 What general administrative regulations apply to ESEA programs?

Subpart B—Selection Criteria

299.3 What priority may the Secretary establish for activities in an Empowerment Zone or Enterprise Community?

Subpart C—Consolidation of State and Local Administrative Funds

299.4 What requirements apply to the consolidation of State and local administrative funds?

Subpart D—Fiscal Requirements

299.5 What maintenance of effort requirements apply to ESEA programs?

Subpart E—Services to Private School Students and Teachers

299.6 What are the responsibilities of a recipient of funds for providing services to children and teachers in private schools?
299.7 What are the factors for determining equitable participation of children and teachers in private schools?
299.8 What are the requirements to ensure that funds do not benefit a private school?
299.9 What are the requirements concerning property, equipment, and supplies for the benefit of private school children and teachers?

Subpart F—Complaint Procedures

299.10 What complaint procedures shall an SEA adopt?
299.11 What items are included in the complaint procedures?
299.12 How does an organization or individual file a complaint?

Authority: 20 U.S.C. 1221e–3(a)(1), 6511(a), and 7373(b) unless otherwise noted.

Subpart A—Purpose and Applicability

§ 299.1 What are the purpose and scope of these regulations?

(a) This part establishes uniform administrative rules for programs in Titles I through XIII of the Elementary and Secondary Education Act of 1965, as amended (ESEA). As indicated in particular sections of this part, certain provisions apply only to a specific group of programs.

(b) If an ESEA program does not have implementing regulations, the Secretary implements the program under the authorizing statute, and, to the extent applicable, Title XIV of ESEA, the General Education Provisions Act, the regulations in this part, and the Education Department General Administrative Regulations (34 CFR Parts 74 through 86) that are not inconsistent with specific statutory provisions of ESEA.

(Authority: 20 U.S.C. 1221e–3(a)(1))

§ 299.2 What general administrative regulations apply to ESEA programs?

With regard to the applicability of Education Department General Administrative Regulations (EDGAR) in Part 80 to the ESEA programs except for Title VIII programs (Impact Aid) (in addition to any other specific implementing regulations):

(a) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) applies to State, local, and Indian tribal governments under direct grant programs (as defined in 34 CFR 75.1(b)), and programs under Title XI of ESEA.

(b) 34 CFR Part 80 also applies to State, local, and Indian tribal governments under all other programs under the ESEA and to programs under Title III of the Goals 2000: Educate America Act (Title III of Goals 2000), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by State educational agencies (SEAs) and local educational agencies (LEAs) under the ESEA and Title III of Goals 2000. If a State adopts its own alternative requirements, the requirements must be available for inspection upon the request of the Secretary or the Secretary's representatives and must—

(1) Be sufficiently specific to ensure that funds received under ESEA and Title III of Goals 2000 are used in compliance with all applicable statutory and regulatory provisions;

(2) Ensure that funds received for programs under ESEA and Title III of Goals 2000 are spent only for reasonable and necessary costs of operating those programs; and

(3) Ensure that funds received under ESEA and Title III of Goals 2000 are not used for general expenses required to carry out other responsibilities of State or local governments.

Note: 34 CFR 222.13 indicates which EDGAR provisions apply to Title VIII programs (Impact Aid).

Note: To meet the first of the three standards, alternative State provisions must, among other things, ensure that costs are allocable to a particular cost objective.

(Authority: 20 U.S.C. 1221e–3(a)(1))

Subpart B—Selection Criteria

§ 299.3 What priority may the Secretary establish for activities in an Empowerment Zone or Enterprise Community?

For any ESEA discretionary grant program, the Secretary may establish a priority, as authorized by 34 CFR 75.105(b), for projects that will—

(a) Use a significant portion of the program funds to address substantial problems in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise

Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture; and

(b) Contribute to systemic educational reform in such an Empowerment Zone, including a Supplemental Empowerment Zone, or such an Enterprise Community, and are made an integral part of the Zone or Community's comprehensive community revitalization strategies.

(Authority: 20 U.S.C. 2831(a))

Subpart C—Consolidation of State and Local Administrative Funds

§ 299.4 What requirements apply to the consolidation of State and local administrative funds?

An SEA may adopt and use its own reasonable standards in determining whether—

(a) The majority of its resources for administrative purposes comes from non-Federal sources to permit the consolidation of State administrative funds in accordance with section 14201 of the Act; and

(b) To approve an LEA's consolidation of its administrative funds in accordance with section 14203 of the Act.

(Authority: 20 U.S.C. 8821 and 8823)

Subpart D—Fiscal Requirements

§ 299.5 What maintenance of effort requirements apply to ESEA programs?

(a) *General.* An LEA receiving funds under an applicable program listed in paragraph (b) of this section may receive its full allocation of funds only if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(b) *Applicable programs.* This subpart is applicable to the following programs:

(1) Part A of Title I (Improving Basic Programs Operated by Local Educational Agencies).

(2) Title II (Eisenhower Professional Development Program) (other than section 2103 and part C of this title).

(3) Subpart 2 of Part A of Title III (State and Local Programs for School Technology Resources).

(4) Part A of Title IV (Safe and Drug-Free Schools and Communities) (other than section 4114).

(c) *Meaning of ''preceding fiscal year''.* For purposes of determining if the requirement of paragraph (a) of this section is met, the ''preceding fiscal year'' means the Federal fiscal year, or the 12-month fiscal period most commonly used in a State for official reporting purposes, prior to the beginning of the Federal fiscal year in which funds are available for obligation by the Department.

Example: For fiscal year 1995 funds that are first made available on July 1, 1995, if a State is using the Federal fiscal year, the ''preceding fiscal year'' is Federal fiscal year 1994 (which began on October 1, 1993 and ended September 30, 1994) and the ''second preceding fiscal year'' is Federal fiscal year 1993 (which began on October 1, 1992). If a State is using a fiscal year that begins on July 1, 1995, the ''preceding fiscal year'' is the 12-month period ending on June 30, 1994, and the ''second preceding fiscal year'' is the period ending on June 30, 1993.

(d) *Expenditures.* (1) In determining an LEA's compliance with paragraph (a) of this section, the SEA shall consider only the LEA's expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(2) The SEA may not consider the following expenditures in determining an LEA's compliance with the requirements in paragraph (a) of this section:

(i) Any expenditures for community services, capital outlay, debt service or supplemental expenses made as a result of a Presidentially declared disaster.

(ii) Any expenditures made from funds provided by the Federal Government.

(Authority: 20 U.S.C. 8891)

Subpart E—Services to Private School Students and Teachers

§ 299.6 What are the responsibilities of a recipient of funds for providing services to children and teachers in private schools?

(a) *General.* An agency or consortium of agencies receiving funds under an applicable program listed in paragraph (b) of this section, after timely and meaningful consultation with appropriate private school officials (in accordance with the statute), shall provide special educational services or other benefits under this subpart on an equitable basis to eligible children who are enrolled in private elementary and secondary schools, and to their teachers and other educational personnel.

(b) *Applicable programs.* This subpart is applicable to the following programs:

(1) Part C of Title I (Migrant Education).

(2) Title II (Professional Development) (other than section 2103 and part C of this title).

(3) Title III (Technology for Education) (other than Part B of this title) (Star Schools).

(4) Part A of Title IV (Safe and Drug-Free Schools and Communities) (other than section 4114).

(5) Title VI (Innovative Education Program Strategies).

(6) Title VII (Bilingual Education).

(c) *Provisions not applicable.* Sections 75.650 and 76.650 through 76.662 of Title 34 of the Code of Federal Regulations (participation of students enrolled in private schools) do not apply to programs listed in paragraph (b) of this section.

(Authority: 20 U.S.C. 8893)

§ 299.7 What are the factors for determining equitable participation of children and teachers in private schools?

(a) *Equal expenditures.* (1) Expenditures of funds made by an agency or consortium of agencies under a program listed in § 299.6 (b) for services for eligible private school children and their teachers and other educational personnel must be equal on a per-pupil basis to the amount of funds expended for participating public school children and their teachers and other educational personnel, taking into account the number and educational needs of those children and their teachers and other educational personnel.

(2) Before determining equal expenditures under paragraph (a)(1) of this section, an agency or consortium of agencies shall pay for the reasonable and necessary administrative costs of providing services to public and private school children and their teachers and other educational personnel from the agency's or consortium of agencies' total allocation of funds under the applicable ESEA program.

(b) *Services on an equitable basis.* (1) The services that an agency or consortium of agencies provides to eligible private school children and their teachers and other educational personnel must also be equitable in comparison to the services and other benefits provided to public school children and their teachers or other educational personnel participating in a program under this subpart.

(2) Services are equitable if the agency or consortium of agencies—

(i) Addresses and assesses the specific needs and educational progress of eligible private school children and their teachers and other educational

personnel on a comparable basis to public school children and their teachers and other educational personnel;

(ii) Determines the number of students and their teachers and other educational personnel to be served on an equitable basis;

(iii) Meets the equal expenditure requirements under paragraph (a) of this section; and

(iv) Provides private school children and their teachers and other educational personnel with an opportunity to participate that—

(A) Is equitable to the opportunity and benefits provided to public school children and their teachers and other educational personnel; and

(B) Provides reasonable promise of participating private school children meeting challenging academic standards called for by the State's student performance standards and of private school teachers and other educational personnel assisting their students in meeting high standards.

(3) The agency or consortium of agencies shall make the final decisions with respect to the services to be provided to eligible private school children and their teachers and the other educational personnel.

(c) If the needs of private school children, their teachers and other educational personnel are different from the needs of children, teachers and other educational personnel in the public schools, the agency or consortium of agencies shall provide program benefits for the private school children, teachers, and other educational personnel that are different from the benefits it provides for the public school children and their teachers and other educational personnel.

(Authority: 20 U.S.C. 8893)

§ 299.8 What are the requirements to ensure that funds do not benefit a private school?

(a) An agency or consortium of agencies shall use funds under a program listed in § 299.6(b) to provide services that supplement, and in no case supplant, the level of services that would, in the absence of services provided under that program, be available to participating children and their teachers and other educational personnel in private schools.

(b) An agency or consortium of agencies shall use funds under a program listed in § 299.6(b) to meet the special educational needs of participating children who attend a private school and their teachers and other educational personnel, but may not use those funds for—

(1) The needs of the private school; or

(2) The general needs of children and their teachers and other educational personnel in the private school.

(Authority: 20 U.S.C. 8893)

§ 299.9 What are the requirements concerning property, equipment, and supplies for the benefit of private school children and teachers?

(a) A public agency must keep title to, and exercise continuing administrative control of, all property, equipment, and supplies that the public agency acquires with funds under a program listed in § 299.6(b) for the benefit of eligible private school children and their teachers and other educational personnel.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment and supplies placed in a private school—

(1) Are used only for proper purposes of the program; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency must remove equipment and supplies from a private school if—

(1) The equipment and supplies are no longer needed for the purposes of the program; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than the purposes of the program.

(e) No funds may be used for repairs, minor remodeling, or construction of private school facilities.

(f) For the purpose of this section, the term *public agency* includes the agency or consortium of agencies.

(Authority: 20 U.S.C. 8893)

Subpart F—Complaint Procedures

§ 299.10 What complaint procedures shall an SEA adopt?

(a) *General.* An SEA shall adopt written procedures, consistent with State law, for—

(1) Receiving and resolving any complaint from an organization or individual that the SEA or an agency or consortium of agencies is violating a Federal statute or regulation that applies to an applicable program listed in paragraph (b) of this section;

(2) Reviewing an appeal from a decision of an agency or consortium of agencies with respect to a complaint; and

(3) Conducting an independent on-site investigation of a complaint if the SEA determines that an on-site investigation is necessary.

(b) *Applicable programs.* This subpart is applicable to the following programs:

(1) Part A of Title I (Improving Basic Programs Operated by Local Educational Agencies).

(2) Part B of Title I (Even Start Family Literacy Programs) (other than the federally administered direct grants for Indian tribes and tribal organizations, children of migratory workers, Statewide family literacy initiatives, and a prison that house women and children).

(3) Part C of Title I (Migrant Education).

(4) Part D of Title I (Children and Youth Who Are Neglected, Delinquent, or At Risk of Dropping Out).

(5) Title II (Eisenhower Professional Development Program) (other than section 2103 and part C of this title).

(6) Subpart 2 of Part A of Title III (State and Local Programs for School Technology Resources).

(7) Part A of Title IV (Safe and Drug-Free Schools and Communities) (other than section 4114).

(8) Title VI (Innovative Education Program Strategies).

(9) Part C of Title VII (Emergency Immigrant Education)

(Approved by the Office of Management and Budget under OMB Control Number 1810–0591)

(Authority: 20 U.S.C. 1221e–3(a)(1), 8895)

§ 299.11 What items are included in the complaint procedures?

An SEA shall include the following in its complaint procedures:

(a) A reasonable time limit after the SEA receives a complaint for resolving the complaint in writing, including a provision for carrying out an independent on-site investigation, if necessary.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right for the complainant to request the Secretary to review the final decision of the SEA, at the Secretary's discretion. In matters involving violations of section 14503 (participation of private school children), the Secretary will follow the procedures in section 14505(b).

(Approved by the Office of Management and Budget under OMB Control Number 1810–0591)

(d) A requirement for LEAs to disseminate, free of charge, adequate information about the complaint

procedures to parents of students, and appropriate private school officials or representatives.

(Authority: 20 U.S.C. 1221e–3(a)(1), 8895)

§ 299.12 How does an organization or individual file a complaint?

An organization or individual may file a written signed complaint with an SEA. The complaint must be in writing and signed by the complainant, and include—

(a) A statement that the SEA or an agency or consortium of agencies has violated a requirement of a Federal statute or regulation that applies to an applicable program; and

(b) The facts on which the statement is based and the specific requirement allegedly violated.

(Approved by the Office of Management and Budget under OMB Control Number 1810–0591)

(Authority: 20 U.S.C. 1221e–3(a)(1), 8895)

[FR Doc. 97–13490 Filed 5–21–97; 8:45 am]

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federal register

Thursday
May 22, 1997

Part X

Department of Agriculture

Commodity Credit Corporation

7 CFR Parts 1466

Environmental Quality Incentives Program; Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1466

RIN 0578–AA19

Environmental Quality Incentives Program

AGENCY: Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing a final rule for the Environmental Quality Incentives Program (EQIP). CCC published a proposed rule for EQIP in the **Federal Register** on October 11, 1996 (61 FR 53574) and solicited comments from the public. This final rule establishes the process by which CCC will administer EQIP, responds to comments received from the public during the 45-day comment period, and incorporates clarifications to improve implementation of the program.

EFFECTIVE DATE: May 22, 1997.

ADDRESSES: This final rule may be accessed via Internet. Users can access the Natural Resources Conservation Service (NRCS) homepage at http://www.ftw.nrcs.usda.gov; select the 1996 Farm Bill Conservation Programs from the menu.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Loser, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890. Phone: 202–720–1845. Fax: 202–720–1838.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

Pursuant to Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this final rule is an economically significant regulatory action because it may result in an annual effect on the economy of $100 million or more. The administrative record is available for public inspection in Room 6029, South Building, USDA, 14th and Independence Ave, SW, Washington, D.C.

Pursuant to Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program, and included the analysis as part of a Regulatory Impact Analysis document prepared for this rule. The analysis estimates EQIP will have a beneficial impact on the adoption of conservation practices and, when installed or applied to technical standards, will increase net farm income. In addition, benefits would accrue to society for long-term productivity, maintenance of the resource base, non-point source pollution damage reductions, and wildlife enhancements. As a voluntary program, EQIP will not impose any obligation or burden upon agricultural producers that choose not to participate. The program was authorized at $1.3 billion over the seven-year period of FY 1996 through FY 2002, with annual amounts of $200 million per year after the initial interim year of $130 million. During the interim administration period in FY 1996 authorized by 16 U.S.C. 3839aa–8, the CCC used the $130 million to continue implementation of the terms and conditions of the superseded programs to the extent that such terms and conditions were consistent with the statutory provisions of EQIP.

In considering alternatives for implementing the program, NRCS followed the legislative intent to maximize environmental benefits per dollar expended, address natural resource problems and concerns, establish an open participatory process that emphasizes priority areas, and provide flexible assistance to producers who apply appropriate conservation measures while complying with Federal, State, and tribal environmental laws. The baseline alternative recognizes that the four former conservation programs—the Agricultural Conservation Program (ACP), Water Quality Incentives Program (WQIP), Great Plains Conservation Program (GPCP), and Colorado River Basin Salinity Control Program (CRSCP)—ceased to exist on April 4, 1996, with the passage of the authorized amendments in the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) to the Food Security Act of 1985 (the 1985 Act); an interim program extended until October 4, 1996. The baseline assumes that no new program would replace the former programs, resulting in a substantial decrease in funding for USDA conservation efforts. It is recognized that some conservation adoption by agricultural producers would continue in the absence of these programs (e.g., up to 20 percent of producers according to Cooper and Keim's assessment of WQIP). (Reference: Cooper, J.C., R.W. Keim. ''Incentive Payments to Encourage Farmer Adoption of Water Quality Protection Practices.'' American Journal of Agricultural Economics, Volume 78 (February 1996), pages 54–64.) The baseline alternative further recognizes that several other Federal conservation programs will be implemented which will generate environmental benefits. The Conservation Reserve Program (CRP), Wetland Reserve Program (WRP) and the recently established Wildlife Habitat Incentive Program (WHIP) will be implemented during the same time period as authorized for EQIP. The highly erodible land and wetland conservation compliance requirements will continue to be in effect.

Based on the economic analysis, assuming the level of funding authorized by the 1996 Act, an estimated 35.7 million acres of agricultural land would be treated over the seven years of the program, including 18.5 million acres of cropland, 3.7 million acres of pasture, and 13.5 million acres of rangeland. Of the total agricultural land treated, an estimated 26.8 million acres are expected to be in priority areas. In regards to livestock operations needing assistance with animal waste management facilities, NRCS estimates that over 10,000 small- to medium-sized livestock operations will be assisted with EQIP; 65 percent are expected to be in priority areas.

The off-farm public benefits associated with on-farm conservation efforts are directly dependent upon the on-farm treatment needs and associated benefits. In the case of non-point source pollution from agricultural sources, for instance, public benefits are not achieved until private landuser behavior changes and on-site conservation measures are applied. Some of the off-site benefits are attributable to improvements made to enhance freshwater and marine water quality and fish habitat, improved aquatic recreation opportunities, reduced sedimentation of reservoirs, streams, and drainage channels, and reduced flood damages. Additional benefits are from reduced pollution of surface and groundwater from agrochemical management, improvements in air quality by reducing wind erosion, and enhancements to wildlife habitat. EQIP encourages participants to adopt a comprehensive approach to solving natural resource and environmental concerns. The program is designed to take full advantage of the relationships among and between conservation practices and the natural resources they are designed to protect. Unlike CRP and WRP, EQIP provides for treatment of natural resource concerns while enabling the land to be used for the production of food and fiber. Furthermore, by replacing the four former conservation

programs, the single program will reduce the administrative costs for both farmers or ranchers and the Federal government.

In addition to the expected disbursements for cost-share and incentive payments, EQIP costs include staff costs for actual delivery of technical assistance for practice application and educational assistance to agricultural producers on appropriate conservation methods. Technical assistance costs will vary according to the type of expertise required, the complexity and scope of the natural resource concerns being addressed, and the objectives of the landowner. Technical assistance services are also needed to help producers install conservation practices that may be partially supported by EQIP, other Federal programs, and by State or local government, or private financial assistance programs. In terms of public and private investment, USDA experience indicates that private landuser costs per acre for conservation nearly equal Federal costs when analyzed on a consistent basis. Private landuser costs per year for conservation averaged about $10 per acre nationally, according to a 1995–96 evaluation NRCS conducted for its conservation technical assistance and watershed protection program activities.

Total discounted benefits on cropland for EQIP are estimated at $1651 million. This includes on-site production benefits of $544 million, other reduced input benefits (such as irrigation savings) of $181 million, and off-site benefits of $924 million. This compares to estimates of $504 million and $410 million for federal and private costs, respectively.

Total discounted benefits for pasture are estimated at $324 million. These benefits compare to Federal and private costs of $51 million and $63 million, respectively. Total discounted benefits for rangeland are estimated at $438 million, compared to Federal and private costs of $204 million and $83 million, respectively.

The total discounted present value of benefits for EQIP (excluding any benefits from conservation practices for treatment of animal waste) amount to $2.41 billion while the present value of total discounted costs, both public and private, are estimated at $1.65 billion. The net benefits (estimated benefits less all costs) amount to $759 million expressed in discounted present value dollars. Providing for an allowance for the accrual of treated acreage over time and adjusting to an annual basis (at a 3 percent interest rate), the annualized net benefits are estimated to be $76 million, of which 62%, or $47 million, are on-site benefits. Other studies have determined off-site benefits as approximately 2 to 3 times the amount of on-site benefits (Resources Conservation Act, USDA, 1989). Assuming the net off-site benefits are a medium level of 2.5 times that of on-site benefits, then net off-site benefits will be $118.3 million annually, for a total on-and off-site benefits of $165.6 million annually.

The overall benefit to cost ratio is estimated to be 1.46, even though off-site benefits for pasture and rangeland and total benefits for animal waste management were not estimated due to unavailability of data. The benefit to cost ratios for the major land types are: cropland, 1.81; pasture, 2.84; and rangeland, 1.52. Cropland treatment will produce the largest on-site and off-site benefits. The on-site benefit to private cost ratios for cropland, pasture, and range are 1.77, 5.12, and 5.25 respectively.

A copy of this analysis is available upon request from Jeffrey R. Loser, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

CCC has determined through an amendment to the ''Environment Assessment for the Environmental Quality Incentives Program, August 1, 1996'' that the issuance of this final rule will not have a significant effect on the human environment. Copies of the Environmental Assessment, the amendment, and the finding of no significant impact may be obtained from Jeffrey R. Loser, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890.

Paperwork Reduction Act

No substantive changes have been made in this final rule which affect the recordkeeping requirements and estimated burdens previously reviewed and approved under OMB control number 0560–0174.

Executive Order 12998

This final rule has been reviewed in accordance with Executive Order 12998. The provisions of this final rule are not retroactive. Furthermore, the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614 and 11 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to § 304 of the Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354, USDA classified this final rule as major and CCC conducted a risk assessment. Available upon request is an environmental risk assessment including a comparison of the relative risks managed by EQIP and other programs in the Department which address similar risks resulting from comparable activities. One year after the final rule is promulgated, the economic analysis based on a risk management assessment will address the costs associated with implementation and compliance of the regulation and qualitative and quantitative benefits of the regulation. A copy of the risk assessment is available upon request from Jeffrey R. Loser, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C., 20013–2890.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, CCC assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or tribal government, or the private sector; therefore a statement under § 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Small Business Regulatory Enforcement Fairness Act of 1996

Pursuant to 5 U.S.C. § 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, it has been determined by CCC that it is impracticable, unnecessary, and contrary to the public interest to delay the effective date of this rule. Making this final rule effective immediately will permit CCC to offer the public timely, reliable information about funding for conservation practices as early before the start of the spring 1997 planting season as possible. Information about the availability of the program for establishing conservation practices may

influence planting decisions and should, therefore, be disseminated to producers before planting decisions are made. Failure to provide this information in a timely manner may mean that the realization of important conservation benefits available under EQIP may be delayed for another year before the start of another planting season. Further, since the four former conservation programs ceased to exist on April 4, 1996, and the temporary or interim authority to administer EQIP ended on October 4, 1996, there is no program in operation nationally that provides technical, financial, and educational assistance of this kind to producers for natural resource conservation purposes. Accordingly, this rule is effective upon publication in the **Federal Register**.

Discussion of Program

The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) (Pub. L. 104–127, April 4, 1996) amended the Food Security Act of 1985 (the 1985 Act) (16 U.S.C. 3801 *et seq.*) to re-authorize the Environmental Conservation Acreage Reserve Program as the umbrella conservation program encompassing the Conservation Reserve Program (CRP) (16 U.S.C. 3831–3836), the Wetlands Reserve Program (WRP) (16 U.S.C. 3837 *et seq.*), and the newly created Environmental Quality Incentives Program (EQIP) (16 U.S.C. 3840). Under the Environmental Conservation Acreage Reserve Program, the Secretary of Agriculture may designate areas as conservation priority areas to assist landowners to meet nonpoint source pollution requirements, other Federal and State environmental laws, and to meet other conservation needs.

EQIP combines into one program the functions of several conservation programs administered by the Secretary of Agriculture, including the Agricultural Conservation Program (ACP), the Agricultural Water Quality Incentives Program, the Colorado River Salinity Control Program (CRSCP), and the Great Plains Conservation Program (GPCP), which are rescinded by the 1996 Act. Through EQIP, flexible technical, financial, and educational assistance is provided to farmers and ranchers who face serious threats to soil, water, and related natural resources on their land, including grazing lands, wetlands, forest land, and wildlife habitat. Participation in the program is voluntary. The assistance is provided in a manner that maximizes environmental benefits per dollar expended, helps producers comply with the eligibility provisions of the 1985 Act, and helps farmers and ranchers meet Federal and State environmental requirements. A consolidated and simplified conservation planning process will be used to reduce any administrative burdens that would otherwise be placed on producers.

The 1985 Act provides that funds of the CCC will be used to fund the assistance provided under EQIP. For fiscal year 1996, $130 million was made available to administer an interim program; a minimum of $200 million is to be made available for each of fiscal years 1997 through 2002. Fifty percent of the funding available for the program will be targeted at practices relating to livestock production.

The CCC is a government-owned and operated corporation, chartered in the 1930's to help stabilize and support farm prices and income, and to maintain balanced supplies and orderly distribution of agricultural commodities. The 1996 Act expanded the mission of the CCC to include the power to carry out conservation or environmental programs authorized by law.

The CCC is run by a Board of Directors, and the Secretary of Agriculture serves as the Chairman of the Board. The Administrator of Farm Service Agency (FSA) and the Chief of NRCS serve as officers of the corporation. The CCC does not have its own operating personnel, and all work done on behalf of the CCC is performed by personnel of agencies within USDA. Pursuant to CCC bylaws, the NRCS Chief and the FSA Administrator, as officers of the corporation, may use NRCS and FSA personnel, respectively, to conduct work for CCC.

EQIP is a CCC-funded program, as reflected by the placement of this regulation with other CCC program regulations and the designation of CCC throughout the regulation itself. On behalf of the CCC, the NRCS and FSA share administration of EQIP. Where appropriate, this final regulation describes the CCC responsibilities performed by personnel from the two respective agencies.

On October 11, 1996, CCC published a proposed rule with request for comments. The proposed rule described the program requirements, administrative processes, and eligibility criteria that CCC would use in implementation of EQIP. The proposed rule also described how priority areas and significant statewide natural resource concerns for program funding would be designated and what information would be considered in making those designations. Over 800 separate responses containing about 2500 specific comments were received during the 45-day comment period: 360 responses from farmers, ranchers, and other individuals, 121 from agricultural and rural community organizations, 49 from environmental organizations, 111 from conservation districts and related groups, 66 from business entities, and 109 from State and local agencies.

Additional responses were received from Federal agencies and employees; their comments are not included in the following analysis of public comments. These responses were treated as inter- and intra-agency comments and considered along with the public comments where appropriate.

All comments received are available for review in Room 6032–S, South Building, 14th and Independence Ave., S.W., Washington, D.C., during regular business hours (8 a.m. to 5 p.m.) Monday through Friday.

Analysis of Public Comment

Overall, almost all respondents expressed appreciation for the opportunity to comment on the EQIP proposed rule. Many offered valuable suggestions for improving or clarifying specific sections of the proposed rule. Some of these suggestions were group efforts, where individual responses used similar or identical language to identify and describe their interests, concerns, and recommended modifications to the proposed rule.

The majority of comments centered on six major issues in the proposed rule: definition of large confined livestock operation; focusing the program in priority areas; local work groups; requirement for a conservation plan and long-term contract; roles of agencies; and delayed payments in the first fiscal year of a contract. Several comments either commended or criticized specific statutory requirements. These comments were considered as part of the rulemaking record to the extent that they were relevant to the provisions of the rulemaking. Numerous minor editorial and other changes in the text were suggested; these comments are not included in the following analysis but all were considered and many of the minor technical changes were included in the final rule.

To implement the final rule, NRCS will, with concurrence from FSA, be responsible for establishing and documenting in program guidance the overall policies, priorities, procedures, and guidelines for EQIP. NRCS will seek the review and input by other Federal agencies, as appropriate, when developing the guidance document.

General Comments on 7 CFR Part 1466

Under the proposed rule, CCC would set out EQIP regulations in 7 CFR part 1466. The following summarizes general comments received on the proposed rule and CCC's response to them.

1. The 1996 Act

Support for the introduction of EQIP and the proposed method for implementing its provisions was expressed in 78 comments. An additional 29 comments express general disagreement with the introduction of a new program, its proposed method for implementation, and the elimination of programs such as the ACP that have been in existence for many years. *The Department recognizes that EQIP provides a new direction for natural resources conservation programs and, as such, may create concern among those familiar with former programs. However, Congress established EQIP to combine into a single program the functions of the former programs and to carry out the single program in a manner that maximizes environmental benefits per dollar expended, and the Department is required to administer the laws as passed by Congress.*

2. Preamble Language in the Proposed Rule

Nineteen comments concern the length of the public comment period. Twelve comments request an extension of the comment period by at least 30 to 45 days. Seven of the comments appreciate the opportunity given for input and the varied mediums by which comments would be accepted. *Over 800 responses were received from a range of interested parties from across the Nation. CCC believes that a sufficient length of time was provided and it has received sufficient input to proceed to a final rule.*

Five comments concern the benefit cost assessment conducted pursuant to Executive Order 12866. These comments suggest that most environmental benefits occur off-site, recognize the difficulty in quantifying off-site environmental benefits, and support Federal incentives for producers to adopt on-site practices. *The comments were considered along with other information and data to finalize the benefit cost assessment.*

The preamble to the proposed rule included a discussion of the efforts being made to improve program outreach to all eligible citizens and solicited suggestions regarding how program delivery can be improved on environmentally sensitive land managed by producers who have not participated historically in the Department's conservation programs. There were 25 comments received in response to this request. Five comments express general support for USDA outreach efforts. Nine comments express concern that EQIP will primarily benefit large agricultural operations to the detriment of smaller, family-run operations. One comment states that it appeared the midwestern farmers would benefit to a greater extent than those in the southeast and recommends the program provide equal benefits all over the country. Several other miscellaneous comments were received on outreach.

Seven comments made specific recommendations for increasing USDA's outreach efforts. These recommendations include: permit flexible schedules for applying practices and systems; offer low-cost conservation practice alternatives; consider the value of a producer's labor as the producer's share of the cost; utilize local cooperative extension service agencies in the education efforts; conduct a survey of producers who do not normally participate and ask them the reasons for their non-participation; provide flexibility regarding the control of land for American Indians and others; and, coordinate the various conservation programs such as CRP, WRP, and EQIP. Several comments suggest Amish and Old Order Mennonite producers, Tribes, and Pacific Islanders are groups that have not participated historically and USDA should encourage greater participation. *The Department remains dedicated to increasing program availability to all eligible citizens. The recommendations made in the public comments have been incorporated in the final rule where applicable or will be included in program guidance and delivery activities.*

Section-by-Section Comments on 7 CFR Part 1466

Section 1466.1 Applicability

The proposed rule indicated that farmers and ranchers could receive program assistance to address soil, water and related natural resources concerns. There were 44 comments expressing support for wildlife habitat concerns receiving program assistance on par with soil and water issues and many of these comments wanted the final rule to reflect the emphasis on wildlife issues to a greater extent. Three comments voice concern that a balance should be attempted among soil conservation, water quality, and other natural resource concerns; one commenter believes EQIP should not be targeted as an environmental program; and seven commenters identify particular natural resource concerns that EQIP should encompass. *EQIP shall be implemented in a balanced manner in accordance with the statutory purposes for which EQIP was established, including the statutory admonition to achieve environmental benefits in a cost-effective manner. The proposed rule contained broad language to facilitate the identification of a broad range of natural resource concerns at the local level and the Department still believes that this is the appropriate approach. Therefore, no change is made in this section's language related to natural resource concerns. The final rule now contains, however, a new definition for ''related natural resources'' to help clarify the broad range of natural resource concerns that are intended.*

Seven comments support cost-share assistance for the implementation of profitable practices. Several of these comments indicate that a practice may prove profitable for a producer to implement in the long term but the initial cost of installation may limit the extent of its adoption. These commenters suggest that EQIP should provide cost-share to off-set the initial outlay. Three commenters specifically indicate that cost-share assistance should not be provided for practices that are locally accepted as being sound and necessary components of a profitable agricultural operation. *EQIP assistance is not to assist producers in the performance of normal or routine farming operations, but to encourage the adoption of practices which address particular natural resource concerns. During program implementation, the Department will scrutinize the profitability of certain practices, ascertain whether such practices would likely be adopted absent program assistance, and direct program assistance accordingly. Even though EQIP assistance may not be available for a practice determined to be a ''profitable practice,'' other Federal, State, tribal, or local programs may provide credit or other types of assistance to producers for initial outlay costs. Producers can obtain information regarding other USDA program assistance from their local USDA service center.*

Five comments suggest the rule and the processes for implementation of EQIP should be simplified, but gave no further specific examples of how this could be accomplished. *The Department will evaluate on a continuing basis ways to improve program delivery, including making the application process simpler*

and removing unnecessary administrative steps for the participant.

Section 1466.2 Administration

In this section, the respective roles of the NRCS and FSA were identified, and provided for other agencies to assist NRCS and FSA with implementing EQIP. Five comments express approval of the roles outlined for the two agencies. Three comments express specific disapproval of NRCS and FSA sharing responsibility for program implementation and 3 comments believe that such an arrangement would prove cumbersome. Two comments express the importance that the agencies administer the program in a simple and coordinated manner. Four comments desire further clarification of the respective roles of the agencies. One comment notes that successful program implementation requires the agencies to train their personnel. *USDA believes that it is important for both NRCS and FSA to share in administrative responsibilities for the program and that the respective roles of each agency are satisfactorily identified. The proposed arrangement takes advantage of the proven expertise of both NRCS and FSA. USDA established the respective roles for NRCS and FSA and continues to find this shared responsibility for program implementation to be an effective utilization of Department resources. Training of NRCS, FSA, and cooperating agency employees will be conducted to ensure that employees can perform their jobs in a highly skilled, quality manner. Accordingly, no change has been made in the final rule concerning the shared responsibilities of NRCS and FSA.*

Fifteen comments concern NRCS leadership of the program. Ten of the comments support the NRCS State conservationist making local program and funding decisions. One comment supports NRCS making funding decisions and allocation determinations with FSA concurrence as proposed in the rule. Two comments urge that FSA should not be involved at all except for administrative purposes. Two comments state that FSA should not be involved in the program because of the different missions between NRCS and FSA.

There were 45 comments regarding the roles of FSA and FSA county committees in the program. Twenty-six comments favor the administration of the program should be fully carried out by FSA county committees. Nine comments state that the program should be fully carried out through the FSA. Eight comments suggest that FSA continue to perform their same duties as in the former ACP, with NRCS providing technical assistance only. Two comments state that FSA and FSA county committees should administer EQIP due to the cost-effectiveness of the CRP and the ACP.

The Department believes that the framework identified for delivery of the program utilizes the proven expertise of NRCS and FSA to the fullest extent possible. This framework identifies the primary role of NRCS to be the Department's primary agency for natural resource conservation on private lands. It also meets a basic intent of the Department to simplify delivery of programs and improve their flexibility and efficiency with both agencies playing a major role in their delivery. EQIP places a much stronger emphasis on long-term natural resource planning and assessment than was emphasized under ACP. The core elements of the program require a higher level of technical expertise on a broader scale than performed under previous conservation programs. NRCS has the technical capability to meet these strengthened technical assistance requirements and FSA can provide efficient administrative expertise to support the program. No change was made in the final rule concerning the roles of the agencies in the program.

Two comments make the suggestion that NRCS attempt to quantitatively evaluate each contract, within the context of its watershed, in order to fulfill its responsibility to evaluate program success. One comment notes that the benefits of the conservation practices may be much greater off-site and NRCS should consider such benefits when evaluating the success of a particular contract. *NRCS will evaluate the program's performance at the farm and ranch, priority area, State, regional, and national levels to: ensure that the program purposes are met; evaluate the net benefits of different conservation practices; and, understand ways to improve performance of the program. The program evaluation and assessment process will include, but not be limited to: determination of benchmark or baseline natural resource conditions; establishment of performance indicators; measurement of conservation effects and outcomes; determination of financial investment; and, compilation of program accomplishments. National program assessments will be done by aggregating assessments, data, and information from the farm/ranch, priority area, State, and regional levels.*

In regards to funding decisions in paragraph 1466.2(b)(6), 52 comments suggest that FSA county committees should have authority to make all funding and allocation determinations. Twelve comments support NRCS having authority to make funding and allocation decisions. One comment suggests that NRCS and FSA should share responsibility for making funding decisions and allocation determinations. One comment states that site-specific funding decisions and ranking producer applications are the sole responsibility of NRCS and FSA county committees must fund ranked plans. *The framework that the Secretary approved for delivery of the program provides for an adequate concurrence mechanism regarding funding and allocation determinations between NRCS and FSA. NRCS, as the lead agency, is in the best position to make initial funding recommendations and then work closely with FSA to obtain necessary concurrence. No change was made in the final rule regarding these comments.*

There were 31 comments on paragraph 1466.2(c) regarding the use of the local, county, and State committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act of 1936 in administering subtitle III conservation programs. The commenters suggest the Secretary should provide the FSA committees with the same authorities as under the former conservation programs. *The Department believes that the local, county, and State committees are being used in a manner that is consistent with section 8(b) of the Soil Conservation and Domestic Allotment Act of 1936. The committees have specified responsibilities on local work groups or State technical committees, and in administrative processes and procedures for applications, contracting, and financial matters. Additionally, USDA believes that the FSA county committee system will continue to serve a vital role by representing the resource concerns of their production agriculture constituents. FSA county committees have built a foundation of trust over the years with many farmers and ranchers throughout the Nation. As a full partner on the local work groups the FSA county committees will be able to gain the involvement of and acceptance by the farmers and ranchers whom they represent in the locally-led conservation effort. FSA county committees are an integral component of the local work group and their input and judgment is important to the effort. All members of the local work group will need to create working relationships with others so that the collaborative efforts of the group will result in a successful*

program. No change was made in the final rule concerning the roles of FSA county committees.

In reference to paragraph 1466.2(f), nineteen comments want the State FSA Committees to have approval authority for all applications and cooperative agreements with other entities. Eight comments support the proposed rule language that provides for cooperative agreements with other entities, believing that such arrangements could improve delivery of the program and address natural resource concerns in coordination with others. Four comments express support for the agencies to incorporate local information and to utilize existing state and local coalitions and partnerships. Two comments indicate that CCC should provide funding to partnering agencies. Ten comments express concern that such arrangements would increase the administrative costs of the program and thus result in less conservation on the ground. *The Department believes that the opportunity to work with other Federal agencies, local and State partners, including those in the private sector, will improve delivery of the program and is essential to the successful resolution of an area's natural resource concerns. The Department currently uses cooperative agreements and other instruments for activities other than EQIP which involve both financial and in-kind service considerations. Such partnerships have proven to be cost-effective. Both NRCS and FSA may enter into cooperative agreements with others to assist with implementation of the program elements for which the respective agency has principal responsibility. The final rule language has not been changed regarding cooperative agreements.*

A general comment recommends the dissemination of information regarding EQIP through regular channels now in existence and via the Internet. The commenter proposes that an Internet homepage be developed and be placed on-line within 3 months of approval of the final rule. The homepage would contain a copy of the final rule, National and regional points of contact, a list of the priority areas, a list of innovative practices and technologies in use and a point of contact for more information, a list of NRCS offices and links to State NRCS web sites. *USDA and NRCS currently have home pages where information can be obtained. NRCS currently has the EQIP proposed rule and several EQIP fact sheets available, along with a list of NRCS State offices and links to NRCS State web sites. NRCS plans to use all available avenues of media, including the Internet, to provide the final rule, lists of priority areas, the EQIP guidance documents, and other information to the general public. The USDA homepage can be accessed at http://www.usda.gov. The NRCS homepage can be accessed at http://www.ftw.nrcs.usda.gov. No change has been made to the final rule concerning this comment.*

Section 1466.3 Definitions

Agricultural Land

Two comments on this definition: one comment suggests that the term should mean an area on which crops or livestock are intensively produced, while the other comment suggests including the examples given in paragraph 1466.4(d). *The definition has been modified in the final rule to be consistent with the examples given in paragraph 1466.4(d).*

Confined Livestock Operation

Three comments on this definition: one comment supports the definition as proposed; one comment suggests that a size element be included in the definition; the remaining comment suggests that the days of confinement be extended from 45 days to 60 days. *A definition of confined livestock operation has been included in the final rule. It includes the parameters regarding ''confinement'' that were included in the proposed rule. The 45 days included in the definition is unchanged so that it is consistent with a definition for confinement used in the Clean Water Act. This definition is commonly understood and accepted. The Department does not desire to create another definition that may cause confusion or unnecessary administrative burdens on producers. Section 1466.7 addresses how the Department intends to administer large confined livestock operations in the program.*

Conservation District

One comment suggests the term ''Native American Tribe'' not be used in the definition but be replaced with ''Indian Tribe'' according to the Indian Self-Determination and Education Assistance Act of 1975. *The Department agrees with the suggestion on Indian tribes and has incorporated the change in the final rule. A definition of Indian tribe has also been included in the final rule.*

Conservation Management System

One comment requests this definition be clarified in order to distinguish a conservation management system from a resource management system. *A resource management system is a conservation management system that achieves or exceeds a sustainable treatment level for the natural resources. Conservation management systems include other systems that do not achieve sustainability for one or all the natural resources. The definition has been clarified in the final rule.*

Conservation Plan

Six comments on this definition suggest the phrase ''record of a participant's decisions...for treatment of a unit of land or water'' unduly limits the nature and purpose of a conservation plan. Some of these comments state that a conservation plan consists of more than a record of decisions and that the definition should include language such as: identified natural resource problems; a participant's own goals; alternative solutions considered to reach those goals; and, selected solutions to achieve cost-effective environmental management. Additionally, the comments suggest the concept of whole-farm planning be added. *The Department believes that these concerns are addressed adequately in § 1466.6 which describes the purposes and requirements of a conservation plan in greater detail and provides for the broader goals expressed in the comments. No change has been made to the definition.*

Conservation Practice

One comment suggests this definition be expanded to include integrated pest management (IPM) and that IPM should include integrated weed management. *Since the definition for conservation practice includes reference to a land management practice, and the definition of land management practice includes IPM, the definition of conservation practice includes IPM. The Department believes that IPM includes integrated weed management and further definition is unnecessary. The definition is intended to be generic in nature and reference to specific practices was not intended. Therefore, the definition for conservation practice remains as proposed.*

Land Management Practice

Fifty-two comments suggest changes to this definition. Thirteen comments request ''irrigation management'' should be included under the definition of land management practice. Efficient irrigation practices are supported in 36 comments and most of these comments suggest the term ''efficient irrigation'' be added to the description of eligible conservation practices. *The proposed*

rule included irrigation management under this definition. The Department has modified this in the final rule by referring to ''irrigation water management'' which better describes the intent of the practices and incorporates the concept of efficient irrigation.

The other comments request additions to the example practices listed under land management practices: two comments suggest adding tree planting and one comment suggests adding wellhead protection, crop rotation, cover crop management, and numerous other practices. One comment suggests adding ''including grazing lands, wetlands, and wildlife habitat'' after ''related natural resource concern.'' *The practices listed in the definition are illustrative and not intended to be exhaustive. Tree planting is a vegetative practice and has been included in that definition. A definition of ''related natural resource'' has been included in the final rule. The Department believes that the definition of ''land management practice'', as proposed, encompassed the suggested concepts adequately and does not require changes.*

Livestock, Livestock Production, and Livestock-related Natural Resource Concern

One comment suggests the definition of livestock should include honeybees. One comment on livestock production suggests rotational grazing, fencing, and water development practices should be included in the definition. One comment on livestock-related natural resource concern suggests the spread of noxious weeds via animal waste from confined feeding operations should meet the requirements of this definition. *The Department believes that honeybees should not be considered as livestock but honey is an agricultural food product, thus honeybee keepers are eligible agricultural producers. The other specific suggestions are best left to the NRCS State conservationist in consultation with the State technical committee. No changes have been made to the subject definitions in the final rule.*

Local Work Group

Forty comments concern this definition. Most of the comments request the membership of the local work groups be expanded to others outside of government and provide excellent reasons why certain individuals and organizations could provide information and ideas that would be valuable to the program and the responsibility of the local work groups. *Membership of the local work groups is limited to Federal, State, Indian Tribe, and local government representatives because of restrictions applicable to private advisory panels by the Federal Advisory Committee Act (FACA). Given that almost 3500 separate local work groups are estimated to be established to advise on the implementation of the program, the Department felt that it was unfeasible and burdensome to fulfill possible FACA requirements when establishing each local work group. The Department expects and anticipates that these various representatives who serve on the local work group will request and receive ample information and ideas from the public and their respective constituents. Therefore, no changes are made to this definition.*

Private Agribusiness Sector

Five comments suggest the term ''agricultural input retail dealers'' should be included in the definition since this term was used in the statute. One comment recommends a very broad interpretation of ''agribusiness.'' *The Department intends to have a broad interpretation of this definition so that the largest number of private sector professionals may provide services for the program. The final rule has been changed to include ''agricultural input retail dealers.''*

Resource Management System

Two comments request this definition include grazing lands, wetlands, and wildlife habitat. *The term ''related natural resources,'' which has been included in the final rule, includes these concerns and further inclusion in the definition of resource management system would be redundant. Therefore, no changes were made to this definition.*

State Technical Committee

Six comments concern representation on the State technical committee and guidelines concerning the structure and operation of such committees. *NRCS intends to publish a rule on the structure and purpose of the State technical committee in a separate rulemaking, and shall consider these recommendations regarding committee representation and guidelines as it develops that rule.*

Structural Practice

Four comments recommend this definition include specific mention of ''irrigation water, conveyance, and application equipment'' as examples of structural practices. *The practices listed in the definition are illustrative and not intended to be exhaustive. The Department believes that the definition as proposed encompassed the suggested concepts adequately and does not require changes.*

Unit of Concern

Eight comments request clarification of this definition, one of which expresses concern that the definition had no limits, three of which recommend inserting the concept of whole-farm planning, and the remaining four of which recommend limiting the definition to the portion of the property upon which the conservation practice will occur. *The Department believes that a unit of concern can vary depending on the natural resource concerns and the objectives of the participant. A unit of concern can be a whole farm or a portion thereof. The conservation plan must address the conditions that cause or influence the natural resource concern for which the plan is being developed. Therefore, information from outside the defined unit of concern may be considered where it is necessary to develop the best strategy for meeting the producer's objectives and resolving the natural resource concern. No changes have been made in the final rule for this definition.*

Vegetative Practice

Four comments concern the examples used to describe vegetative practices, one of which recommends deleting permanent wildlife habitat as an example and the remaining three of which recommend including tree planting as an example. *The practices listed in the definition are illustrative and not intended to be exhaustive. Tree planting has been added as an example in the final rule. Permanent wildlife habitat was listed as an example in the statute and has been retained in the final rule.*

New Definitions

Several commenters suggest new definitions be included in the final rule, including: agricultural producer (2 comments); cost-share and incentive payments (4 comments); environmental benefits index (1 comment); Indian tribe (1 comment); Indian trust lands (2 comments); and liquidated damages (1 comment). *The Department will include a procedure in its program guidance for determining an eligible agricultural producer. The term ''environmental benefits index'' is not used in the final rule and, therefore, has not been defined. Definitions for cost-share payments, incentive payments, Indian tribe, Indian trust lands, and liquidated damages have been included in the final rule.*

Section 1466.4 Program Requirements

Four comments support the voluntary aspect of the program. *No change was made in the final rule concerning the voluntary aspect of the program.*

One commenter suggests the wording of the second sentence in paragraph 1466.4(a) should be changed to indicate a participant should develop a conservation plan ''in accordance with'' the local conservation district, instead of ''in cooperation with.'' *As provided in 1466.6(a), USDA agrees that the conservation plan should be approved by the local conservation district, but the plan must also meet the purpose of the program and be acceptable to NRCS. The Department believes the phrase ''in cooperation with'' better reflects the role of the local conservation district. No change was made in the final rule regarding this comment.*

There were 37 comments regarding the use of EQIP funds for providing technical assistance. Although not included in the proposed rule, 21 comments recommend an unspecified maximum cap be established for the use of program funds for technical assistance, one commenter suggests a 10 percent cap, and eight commenters suggest a 5 percent cap to be consistent with the former ACP. One comment supports funds for technical assistance but recommended that FSA committees should determine the amount. One comment said that no funds should go to technical assistance but it should all go to farmers. Four comments support the use of funds for technical assistance noting that without sufficient technical assistance funding it will be difficult for farmers to satisfactorily perform the conservation work. One commenter suggests the cooperative extension service should receive EQIP technical assistance funding for personnel who are providing assistance to producers. *USDA believes that voluntary conservation programs are most successful when sufficient amounts of technical assistance, educational assistance, and financial assistance are provided to producers to aid them in natural resource conservation activities. The 1996 Act amended the 1985 Act to provide that the Secretary of Agriculture is authorized to provide technical, educational, and financial assistance to eligible farmers and ranchers using EQIP. The 1996 Act further stated that the amount of technical assistance provided should be in an amount according to the type of expertise needed, the quantity of time involved, and other factors as determined appropriate by the Secretary. USDA believes that EQIP will require a greater level of technical assistance than the former ACP because EQIP will be dealing with a broader array and more difficult natural resource concerns. Unlike ACP, EQIP will also include conservation plans and long-term contracts for all participants. The 5 percent reimbursement in ACP was not intended to reflect the actual cost for technical assistance. Further, the former GPCP and CRSCP, which were also replaced by EQIP, required technical assistance levels in excess of 5 percent to attain the conservation purposes of the programs. The former conservation programs have shown USDA that a specified rate of technical assistance funding should not be established by rule because natural resource conditions and concerns change over time and the Department needs the ability to adapt to those changing conditions and concerns. USDA believes that NRCS, which will deliver much of the technical assistance in EQIP, should determine the amount of funds needed for this purpose. When making this determination, NRCS will consider its available resources from all programs, and those of other public and private sources of technical assistance. Paragraph 1466.4(b) has not been changed in the final rule.*

Two comments were received regarding control of land as provided in paragraph 1466.4(c)(2)(i). One comment suggests a separate paragraph should be added concerning ''Indian trust land'' because the proposed rule does not clearly show that Indian tribes are among the eligible parties. Another commenter suggests ''communal land'' ownership and leasing arrangements in the Pacific Basin should be eligible for EQIP, including those cultural situations where land assignments are given without written leases. *Program guidance will identify the type of evidence needed to show that an applicant has an adequate control of land. Written leases may be one of the types of evidence, as will historical use of the land and other evidence. Paragraph 1466.4(d) has been amended to clearly show that tribal, allotted, and Indian trust lands are eligible lands.*

One comment states it is burdensome for tribal governments responsible for a vast and complex system of agricultural lands to be required to list all lands under their control, and requests the informational requirements should be lessened for tribes. *The Department believes this comment concerned the requirement for listing agricultural lands so that it can determine if an applicant is in compliance with the highly erodible land and wetland conservation provisions. All applicants must comply with these provisions to be eligible for EQIP, including Tribes that receive certain Departmental benefits. However, the Department will work with Tribes to develop processes which minimize the administrative burden while meeting the requirements for eligibility. For example, an authorized representative of the Tribe or Bureau of Indian Affairs may certify compliance with the highly erodible land and wetland conservation provisions on behalf of the entire Tribe.*

Five commenters express concern that EQIP does not appear to include forest lands. Two comments state a concern that tree planting will not be eligible for program assistance. *The Department believes that forest land, like all other eligible land, must have natural resource problems or pose a threat to natural resources to be eligible for EQIP assistance. Tree planting and other forest land-related conservation practices are eligible for EQIP assistance if they are used to address or resolve the identified natural resource concern. Paragraph 1466.4(d) of the final rule states that forest land may be eligible for enrollment in EQIP; this has not been changed from the proposed rule.*

The Department received 13 comments about the targeting of 50 percent of EQIP funds to livestock-related natural resource concerns. Four comments support this targeting level. One comment urges that funding should be targeted to conservation practices other than expensive animal waste management facilities. One comment suggests the funds should not be targeted to livestock but should be targeted toward encouraging new methods of crop production that reduce soil erosion and improve water quality. One comment encourages a minimum level of $50 million annually be targeted to conservation on private grazing land. One comment recommends the 50 percent level be distributed and measured at the state level, not at the national or local level. Six comments note that only the preamble to the proposed rule mentioned the 50 percent target level and the final rule should clarify the targeting of funds toward livestock-related natural resource concerns. *The 1996 Act requires that 50 percent of available funds be targeted to conservation practices related to livestock production. The final rule has been clarified by adding paragraph 1466.4(e) which addresses the targeting of available EQIP funds to livestock-related natural resource concerns, including concerns on grazing lands and other lands directly attributable to livestock. The target of 50 percent of the funds will be measured at the national*

level since livestock-related natural resource concerns are not evenly distributed in States or at the local level. USDA believes that some priority areas may have none or little natural resource concerns related to livestock production, while other priority areas may have significant concerns related to livestock production. For that reason, no further targeting of funds will be made such as the suggestion to target $50 million to grazing land management. Conservation practices that could be eligible to address livestock-related natural resource concerns include, but are not limited to, grazing land management, livestock exclusion, animal waste management facilities, nutrient management, and streambank and riparian area protection. Consistent with the overall goal of maximization of environmental benefits per dollar expended, the Department will place emphasis on low-cost measures which result in the highest benefits; higher cost practices, such as animal waste management facilities, will be eligible if the investment yields substantially high environment benefits.

Four comments concerned paragraph 1466.4(d)(2) which places restrictions on the eligibility of publicly owned land. One commenter supports the provisions in the rule because it would allow ranchers to use EQIP to apply conservation practices on leased public grazing lands. One commenter suggests publicly owned school land should be eligible if leased to farmers. One commenter suggests that sentence 1466.4(d)(2)(ii) of the proposed rule should not restrict practices which will primarily benefit the government landowner but should permit funding of practices that are consistent with management plans of the public landowner. One commenter suggests that sentence 1466.4(d)(2)(iii) should be rewritten to ''conservation practices will contribute to an improvement in the identified natural resource concern.'' *The Department believes that the program should be used to benefit the environment, including those instances where producers use publically owned land. The proposed rule sentence stating that government landowners should not be primary beneficiaries of the program has been deleted in the final rule. Paragraph 1466.4(d)(2) allows ranchers who lease public grazing lands and producers who lease public school land to use EQIP on the publicly owned land if the stated criteria are met. Sentence 1466.4(d)(2)(ii) has been rewritten in the final rule to ''conservation practices will contribute to an improvement in the identified natural resource concern.'' USDA believes the provision in sentence 1466.4(d)(2)(iii) requiring written authorization from the government landowner enables the government landowner to ensure the conservation practices are consistent with public land management plans; this sentence has not been changed in the final rule.*

Section 1466.5 Priority Areas and Significant Statewide Natural Resource Concerns.

USDA received 27 comments in support of focusing the program in priority areas. One statement that typifies the comments said this focus ''reinforces the concept these are not ''entitlement'' dollars but funds intended to meet Congressional articulated goals of improved water quality and natural resource conservation.'' Thirty-eight comments disagree with the focus of the program in priority areas mostly because it will restrict availability of funds to the specific priority areas. Eighteen comments indicate support to continue ACP or to use the ACP process of allocating funds to all counties to, as one commenter stated, ''ensure that every county gets a piece of the pie.'' *USDA believes that primarily offering the program in priority areas throughout the Nation is needed to help assure that the most environmentally sensitive areas are considered and funds are directed to the areas in most need. The use of the priority area concept focuses assistance on those areas that pose the most serious threats to soil, water, and related natural resources, including wildlife habitat and natural resources on grazing land and wetlands, and to make environmental enhancements. The program will also provide the most important natural resource benefits in a cost-effective manner. Implementation of conservation measures will be accelerated in these areas. Past experience has shown that by focusing program assistance, greater environmental benefits are derived. Providing program assistance to significant statewide natural resource concerns outside of funded priority areas will result in widespread eligibility of producer. No change was made in the final rule concerning the focusing of the program in priority areas.*

One comment indicates natural resources that are shared by multiple counties and States merit special consideration in the program. USDA agrees with this comment. *This was addressed in large by defining priority areas as watersheds, regions, or areas of special environmental sensitivity or having significant soil, water, or related natural resource concerns. Using environmental and natural resource concerns means that political boundaries should be ignored. The NRCS Regional conservationists will coordinate guidance for multi-state areas and regions. No change was made in the final rule concerning natural resources that are shared by multiple counties and states.*

Several comments suggest specific natural resource concerns should have higher priority or consideration when determining priority areas. Five comments favor water quality. Six comments favor wildlife habitat with one commenter suggesting that wildlife should be a required concern in all priority areas. Urban-influenced or non-agricultural areas are favored by three comments. Pollution prevention is favored by two comments in lieu of clean-up or corrective measures to existing problems. Three comments favor a balanced, comprehensive approach to natural resource concerns instead of solely addressing water quality. *The Department believes that a balanced, comprehensive approach should be used to address natural resource concerns to provide the greatest net benefits to society. Soil, water, air, grazing land, wetland, forest land, wildlife habitat, and other related natural resources are given equal initial consideration for treatment in the program. A definition of ''related natural resources'' has been added in the final rule. The final rule has also been changed in several areas to better clarify this equality of natural resource concerns.*

Five comments concern the coordination of priority areas in EQIP, the CRP, WRP, and other programs. Two of these comments recommend a consolidated or uniform selection process for priority areas in these programs. One comment suggests these programs should be leveraged together to ensure successful implementation of priority areas. Two comments said it would be beneficial if each program had its own priority areas. *USDA agrees with aspects of each of these comments. Close coordination of priority areas in these various program is very important. The programs can be used collectively, but without duplication, in certain priority areas to successfully achieve the goals of the priority area. Likewise, certain priority areas may only need one of the individual programs. The locally led conservation efforts will advise and assist the Department with identifying how and where the various conservation programs can be utilized best. USDA is working on the development of a single, coordinated, and consistent process for*

selection of priority areas for each of the USDA conservation programs. Included in this process will be the ability to have specific priority areas for each program. Therefore, no change has been made to the final rule concerning coordination of priority areas in EQIP, CRP, WRP, and other programs.

Two comments suggest the priority area designation process is too encumbered, subject to too many layers and reviews, and should be streamlined. *The hallmark of the process for selection of priority areas is the locally led conservation effort which features the involvement of local work groups and State technical committees providing advice and recommendations to the Department. This process may include several layers of review and recommendations, but the Department believes this process will result in the greatest possible involvement of local and State stakeholders and flexible assistance to farmers and ranchers. Further streamlining of the process may result in a less localized decision-making process with most decisions made at the national level. No changes have been made in the final rule concerning the priority area designation process.*

USDA received 14 comments suggesting local work groups need to have more involvement by producers, producer organizations, the private agribusiness sector, and other stakeholders at the local level. *USDA agrees that involvement of producers, producer organizations, the private agribusiness sector, and other stakeholders at the local level is important for the local work group to effectively provide advice and recommendations concerning the program. USDA believes, however, this involvement and input can be better achieved with local conservation districts leading the groups which include FSA county committees. Local work groups will be able to work efficiently as they consider the public input and provide information to the Department and others. Some members of the local work group already are farmers and ranchers. The public, including producers, producer organizations, the private agribusiness sector, and other stakeholders at the local level, are encouraged to provide input and information to the local work group. The final rule has been changed to encourage the public to provide input and information to the local work group.*

One comment asks if priority areas will change each year or if they are established through fiscal year 2002. Another comment states there should be a procedure for refining or terminating a priority area. *USDA believes priority areas can have various periods of time that they will be designated and funded. Some priority areas may need only one to three years to accept a sufficient number of contracts that, when fully implemented, will achieve the natural resource goals identified for the area, while other priority areas with extensive or complex concerns may require a longer period to enter into contracts to achieve the natural resource goals. Nevertheless, it is expected that EQIP assistance to a priority area should be limited to a reasonable number of years to enter into contracts to achieve the natural resource goals. This will enable other priority areas to be designated and funded in a more timely manner. The final rule has been changed to clarify that funding may be approved for one or more years. Program guidance will be developed on terminating or ceasing funding to a priority area.*

One comment urges the Department to reconsider the maximum area to be included in a priority area. The commenter notes that the North Dakota prairie pothole region is a large area of the state and would not qualify as a priority area under the proposed rule. *USDA had not specified a maximum or minimum size constraint for a priority area in the proposed rule. USDA does not believe a rigid size constraint should be incorporated in the rule because natural resource concerns vary significantly in scope and extent. Program guidance will be developed for priority areas concerning size or scope, however, so that natural resource goals of the priority area are measurable and achievable in a reasonable period of time. No addition was made in the final rule concerning maximum or minimum size of priority areas.*

One comment suggests the ''shall'' in the second sentence of paragraph 1466.5(a) be changed to ''may.'' This would then indicate that NRCS may give special consideration to applicants in priority areas who have conservation plans that address the natural resource concern(s) for which the priority area was designated. *USDA believes that providing special consideration to applicants that address the natural resource concern(s) for which a priority area was designated is consistent with § 1240C of the 1985 Food Security Act, as amended by the 1996 Act, which states ''the Secretary shall accord a higher priority to assistance and payments that (1) Are provided in conservation priority areas.'' Providing special consideration to applicants that address the natural resource concern(s) for which a priority area was designated will enable the natural resource goals in the priority area to be achieved. No change was made in the final rule concerning the suggested comment.*

Six comments support the provision in paragraph 1466.5(b) which allows the use of program assistance to address significant statewide natural resource concerns that are outside of priority areas. *No change was made to the final rule concerning program assistance to address significant statewide natural resource concerns.*

The Department received 36 comments that support the use of local work groups and the locally led conservation activities as described in paragraph 1466.5(c). Most comments note that identification of natural resource concerns and priorities is done best at the local, grass-roots level. Two comments suggest the local FSA county committees should be equal partners and have input in determining priority areas. Nine additional comments disagree with the locally-led process. Two of these commenters disagree because they believe the decisions should be made at the state level; two said there are too many players or layers of bureaucracy involved; one said that FSA county committees should make the decisions. *The Department believes that locally led conservation efforts, including those which involve local work groups, are very important to the success of program. Local work groups provide information to the Department on EQIP-related items and on other conservation programs and activities. FSA county committees are equal members of the local work group and, as such, will have input in developing and recommending priority area proposals. This process may include several layers of review and recommendations, but the Department believes this process will result in the greatest possible involvement of local and State stakeholders and flexible assistance to farmers and ranchers. Further streamlining of the process may result in a less localized decision-making process with most decisions made at the national level. The roles of the local work group have been retained in the final rule.*

Three comments concern the designation of the chair of the local work group. One comment favors NRCS chairing the group and two comments disagree with this approach, suggesting the local work group should select the chair. *The Department has decided that NRCS should not be required to be the chair of the local work group and the members of the local work group should decide who should be the chair, if one is needed.*

One comment suggests that because conservation districts will be organizing local stakeholder groups to guide the delivery of Federal conservation programs at the local level, the name of the group which will advise USDA should be called the ''USDA Local Farm Bill Team.'' This would help to differentiate the two groups and should help dispel the perception that the new programs, including EQIP, will not be as locally driven as Congress intended. *The Department applauds the efforts of conservation districts to organize local stakeholder groups to provide input into the locally led conservation effort but does not believe the use of the term local work group will create a misunderstanding at the local level. The local work groups may advise the Department on EQIP-related items and on other conservation programs and activities. They may also choose to advise other organizations and government agencies. No change was made in the final rule concerning this comment.*

One commenter notes that conservation districts are not organized in all areas of the Nation and that provisions should be made for another agency or group to lead and coordinate the local work group in the absence of a conservation district. *Program guidance will include a provision whereby NRCS shall convene the local work group in the absence of a conservation district.*

USDA received one comment that recommends that entities other than a Federal, State, or local government agency should be able to make a proposal for a priority area. *Paragraph 1466.5(c) in the final rule has been modified to enable private entities to identify a priority area to the local work group.*

USDA received three comments suggesting that working procedures for local work groups should be clarified. *The Department does not believe that working procedures need to be included in the final rule. Working procedures and other suggestions for effective organization and operation will be provided in guidance documents.*

Three comments encourage multi-county local work groups for multi-county priority areas. One commenter supports the designation of a lead NRCS conservationist to coordinate activities between the local work groups in a multi-county priority area. *The Department agrees with these comments and will incorporate these recommendations in program guidance.*

One comment recommends that conservation districts should provide public notice of intent to organize a local work group. *Due to the membership of the local work group, publishing a public notice of intent to organize a local work group is not required by Federal law. Conservation districts, as subdivisions of State governments, may need to consider this recommendation if required by a State law. Also, conservation districts may chose to publish public notices even if not required by law but the district decides this is the best way to proceed.*

USDA received one comment suggesting that because Indian tribes are sovereign governments, they should be on local work groups. *The definition of local work groups in the proposed rule identified Indian tribes as members and this definition has been retained in the final rule. A definition of Indian tribes has been included in § 1466.3 of the final rule.*

Twelve comments concerned the priority area assessment. Two comments said the assessment will be too troublesome and time-consuming. Seven comments suggest the use of existing natural resource assessments, studies, data, and plans to avoid duplication of work and to increase credibility of the priority area assessment. Two commenters ask if demographic information on population meant that EQIP would favor an area with greater population instead of selecting areas because of environmental conditions. One comment suggests the assessment described in paragraph 1466.5(c) should have quantified information ''when and where possible'' and that the ways ''and means'' to measure performance should be included. *The final rule refers to priority area ''proposals'' (instead of assessments) to better reflect the nature of the item and to reduce confusion with other natural resource assessments. USDA believes the proposals are needed to adequately and correctly designate an area as a priority area, and agrees that existing natural resource assessments, studies, data, and plans should be incorporated into the proposal. Environmental and natural resource conditions, as described in paragraph 1466.5(d)(1), are the principal factors which will be considered when designating a priority area. The recommended language change concerning use of quantified information and ways and means to measure performance have been included in the final rule.*

Six comments suggest NRCS, State technical committees, and local work groups should closely coordinate the process to assess natural resource concerns and identify priority areas with existing efforts at the local and state level. Such efforts may be water resource planning activities, nutrient and manure management programs, or state agricultural conservation programs. *The Department agrees with the recommendation and such guidance will be incorporated in guidance documents being developed to assist the local work groups.*

One comment suggests paragraph 1466.5(c)(4) be modified to read ''The existing staff and incentive, education, and on-farm research programs available at the Federal, State, and local levels, both public and private, to assist with the areawide activities.'' *The suggestion has been included in the final rule.*

USDA received 25 comments in support of the State technical committee making recommendations and the decisionmaking role of NRCS State conservationists. Three comments disagree with the roles of the State technical committee and the NRCS State conservationist, suggesting the decisions should be made at the national level. *USDA believes the roles of the State technical committee and the NRCS State conservationist are best performed at the state level and not at the national level. No change was made in the final rule concerning these comments.*

One comment suggests the State technical committee should develop guidance to local work groups on natural resource information, data, and priorities. *State technical committees and State conservationists may develop guidance to assist local work groups. This will be set forth in program guidance.*

USDA received two comments suggesting the State technical committee and State conservationist should ''concur as much as possible'' with the input from local work groups on designations of priority areas. *Paragraph 1466.5(d) of the final rule identifies how and on what the NRCS State conservationists shall base their decisions to designate priority areas. State conservationists will base decisions on the recommendation of the local work group and State technical committee, among other factors. Only after considering the various criteria and factors identified in this paragraph, and determining that a proposed priority area is worthy of program assistance, will a State conservationist designate a priority area for EQIP assistance.*

Several comments address State technical committees issues that are not EQIP-related, including: one comment suggests the ''consensus process'' is unrealistic and that voting should be used instead; one comment states the State technical committee should have

Indian tribe representation; and, three comments offer procedural and membership suggestions for State technical committees. *The Department will consider these comments in the rulemaking process for State technical committees.*

One comment recommends State governments should be allowed to designate their own priority areas. *The Department believes that the final rule provides State governments with the ability to make proposals for priority areas and no further change has been made to the final rule.*

One comment supports the provision in per paragraph 1466.5(d)(1) that enables NRCS to consider wildlife and wildlife habitat quality and quantity in determining the significance of natural resource concerns in a priority area. *No change has been made to the final rule concerning this comment.*

Two comments suggest paragraph 1466.5(d) should state ''NRCS will give special consideration to priority areas that contain multiple conservation benefits.'' *USDA believes that multiplicity of conservation benefits alone does not justify special treatment. The priority area, whether achieving a single conservation benefit or a range of benefits, must result in significant environmental benefits to justify the expenditure of EQIP funds. The final rule includes a sentence reflecting this consideration.*

One comment suggests 1466.5(d)(1)(v) should recognize the importance of saline characteristics of land and water. *USDA agrees with the comment and the final rule has been revised to ''(v) Saline characteristics of land or water.''*

One comment suggests 1466.5(d)(1)(viii) should state ''Quality and intended use of the receiving waters, including fishery habitat and source of drinking water supply.'' *USDA agrees with the comment and the final rule has been revised as suggested.*

One comment suggests 1466.5(d)(1)(xi) should indicate that natural hazards may include pest problems which threaten natural resources. *USDA agrees with the comment and the final rule has been revised to ''(xi) Other natural hazards or other factors, including the existing agricultural management practices of the producers in the area or pest problems which may threaten natural resources.''*

Five comments refer to consideration of the coordination with and level of support from other programs when allocating funds to priority areas. One comment supports the consideration of the level of support from other State or local programs. One suggests better coordination effort between programs is needed so that taxpayer's money is not wasted. One suggests EQIP funds will be most effectively spent in areas that have no other funding sources. Two suggest funding sources such as from private programs should be considered. One comment suggests both direct and in-kind contributions should be considered. *The Department believes that Federal program funds can be effectively spent in areas where other sources of funding are also available, thus allowing both the Federal and other funding sources to be stretched and made available in other areas. It also agrees that coordination between Federal, State, and local programs is important, and that private funding sources, direct, and in-kind contributions should be considered. Paragraphs 1466.5(d)(2)(vi) and 1466.5(f)(2)(vi) have been revised in the final rule to reflect these recommendations.*

One comment suggests EQIP should be used to assist producers in complying with Tribal environmental laws as well as with Federal and State environmental laws. *USDA agrees with the comment and has included the suggestion in 1466.5(d)(2)(vii) and 1466.5(f)(2)(vii) of the final rule.*

USDA received several other comments concerning the criteria or factors which should be used to select or fund priority areas, including national conservation priority areas. Two comments suggest that clear, minimum criteria should be established to assist with the selection process. One comment suggests the criteria should include soil quality. One comment recommends that existence of education, research, and demonstration farm plans should be part of the criteria. One comment recommends that existence of monitoring and evaluation plans be included. *The Department suggested criteria or factors in the proposed rule language in paragraphs 1466.5(d)(2) and 1466.5(f)(2) to facilitate a broad range of considerations and still believes that this is the appropriate approach. The specific recommendations of the commenters will be included as illustrations of ''other factors'' in the guidance being developed for the program. No change has been made in the final rule to address the comments.*

USDA received comments on paragraph 1466.5(e) concerning the approval of significant statewide natural resource concerns. One comment suggests using criteria such as adjacency to a public natural resource, site characteristics that will affect the likelihood of achieving conservation objectives, and cost to achieve the benefits. One comment suggests that wellhead protection and capping abandoned wells would be good examples of significant statewide natural resource concerns. *The Department agrees with the concepts suggested in the comments and will include this information in program guidance. Actual determinations of significant statewide natural resource concerns are made by the NRCS State conservationist, in consultation with a State technical committee. No change has been made in the final rule to address the comments.*

In regards to national conservation priority areas in 1466.5(f), two comments specifically favor the designation process described in the proposed rule. One comment disagrees with the process, preferring that all decisions should be made at the state level. One comment received by USDA said that the process for identifying national priorities is in part only ''lip service'' to certain groups. The commenter finds the proposed rule lacking as to the significance of national conservation priority area designation and suggests that the designation should result in additional funds to the area. *The Department believes the process described in the proposed rule is appropriate, has value, and will result in greater emphasis for assistance being placed in the designated area(s). Areas of national significance should be designated at the national level. No change has been made in the final rule to address the comments.*

USDA received three comments which suggest use of a national technical committee is needed to ensure participation by national level partners. Eleven comments suggest or nominate specific areas as national conservation priority areas, including: Colorado River basin (5 comments), Great Lakes basin (2), Illinois River basin (2), Chesapeake Bay basin (1), Devil's Lake basin, ND (1), Hudson River basin (1), California pilot recharge program (1). *USDA does not believe that a national technical committee is needed to ensure participation of national level partners. The Department has made effective use of interagency teams throughout the development of the EQIP program and other conservation programs and believes that an interagency team consisting of Federal agency partners will ensure national level participation. The Department will consider the suggestions made when designating national conservation priority areas. Paragraph 1466.5(f)(1) has been changed in the final rule to enable nominations for designating national*

conservation priority areas to be made to the Chief from Federal, State, tribal, or local government agencies, or from private groups or entities.

USDA received two comments recommending that the national conservation priority area designations should be subject to formal rulemaking procedures with public input to assure that the designations have merit. *The Department believes the process established in the final rule will assure that the public has the opportunity to provide input into the designation and that the designations have merit. No change has been made in the final rule to address the comments.*

Concerning the criteria to be considered when selecting national conservation priority areas, several comments were received. One comment suggests environmental significance and multi-state natural resource concerns should be primary selection criteria. Two comments recommend a greater emphasis on international, interstate, or regional concerns, such as migratory bird habitat, be considered. *These comments are consistent with the national program objectives and criteria that the Department intends to use when designating national conservation priority areas. These suggestions will be incorporated in national guidance developed for the program. No change has been made in the final rule to address the comments.*

Twenty comments support the educational assistance to be provided in the program. Of these comments, two also note that the proposed rule did not include specific mention of how the education assistance would be provided. Seven of the comments state the Extension system should be the primary delivery mechanism for the educational needs. Three of the comments state the Extension system and other public and private education providers should be involved. One of the comments suggests wellhead protection should be the topic of education and another comment suggests education on control of noxious weeds. *USDA's development and delivery of high-quality educational opportunities to farmers, ranchers, and assistance providers should enhance the public's knowledge about the conservation opportunities available through EQIP, will aid in implementing their conservation plans, and enhance the overall benefits that will be realized through the implementation of the program. Appropriate education will maximize public benefits by creating a knowledge base (among producers, agency staff, and private consultants) that will extend direct EQIP benefits beyond the actual acreage and life expectancy of financial and technical assistance programs. The final rule includes specific direction for the delivery of education assistance in paragraph 1466.5(h). The provision specifies that NRCS will develop an education plan for a State or priority area. The plan will include, among other things, a description of who will be the education providers. While USDA expects the Extension system to play a significant role in developing the education plans and delivering educational assistance, other public and private education providers are also expected to have significant roles where appropriate. Thus the need for cooperation and coordination among all education providers. The Department believes there are many important topics that can be the focus of educational efforts, including wellhead protection and control of noxious weeds in an environmentally sound manner, but the specific education topics should be determined at the State and local level.*

USDA received numerous comments concerning the funding decisions for EQIP. Two comments support the need for fund decisions at the national level. One comment suggests the NRCS Regional conservationist should make the funding decisions. Eight comments recommend the funding decisions be made at the state level and twelve comments suggest that all funding decisions should be made at the local level. *The Department has revised the provisions for funding decisions in paragraph 1466.5(i) to clarify how these decisions will be made to meet the purposes and intents of the program. USDA believes EQIP must be administered differently than the programs it replaces, including the methods for making funding decisions.*

The Department is committed to making funding decisions based on: The environmental needs and natural resource concerns; the need to maximize environmental benefits per dollar expended; the capability of the partners involved in the proposal to provide flexible technical, educational, and financial assistance; the conservation needs of farmers and ranchers in complying with the highly erodible land and wetland conservation provisions of part 12 of this title and Federal, State, and tribal environmental laws; the opportunity for encouraging environmental enhancement; the anticipated or proven performance of the partners involved in the proposal in delivering the program; and, other relevant information. Funding proposals for State-level approved priority areas are reviewed and competitively ranked in consultation with the State technical committee.

The State technical committee is comprised of professional natural resource managers who represent a variety of disciplines in soil, water, wetlands, plants, wildlife management, and related natural resource and environmental sciences. Members come from agencies such as: NRCS, FSA, Forest Service, CSREES, U.S. Fish and Wildlife Service, Environmental Protection Agency, and other Federal agencies; State agencies responsible for fish and wildlife, forestry, water resources, agriculture, soil and water conservation, and conservation districts; private groups, organizations, or individuals representing agriculture, commodities, agribusiness, environment, land and water management; and, persons knowledgeable about economic and environmental impacts.

After the NRCS State conservationist approves the priority areas, the regional and National levels review the proposals to verify that they meet program guidance and will meet program goals and objectives. A national-level interagency team representing Federal agencies with appropriate expertise and information assists the Chief by reviewing the submitted proposals and making recommendations on adequacy of proposals. The Chief determines funding levels to be allocated to the States, with the concurrence of the FSA Administrator, considering such information as: the environmental and natural resource conditions across the Nation; the interagency team recommendations; recommendations from NRCS Regional conservationists and staff; the funding proposals; and other information identified above in this response. The Chief will also allocate some funds each year using a performance-based incentive reward for the anticipated or proven performance of the partners involved in a proposal in delivering the program in an exceptional manner, and for issues or concerns determined to be of national importance.

After funds are allocated to the NRCS State conservationist, the State technical committee is again consulted on which State-approved priority areas that meet program guidance should be funded and in what amount. The consultation process with the State technical committee in the proposal-approval stage and the funding decision stage helps to ensure that the best proposals are selected and funded.

Twenty-six comments disagree with priority areas receiving the

predominance of funds, but did not recommend a funding level. Five believe priority areas should receive 75 percent of the funds with the remaining 25 percent to significant statewide natural resource concerns outside of priority areas. Three comments suggest a 60 percent priority area to 40 percent outside priority area split. Nine comments favor a 55 percent priority area to 45 percent outside priority area split. Seven comments support a 50 percent priority area to 50 percent outside priority area split. Nine comments favor a 25 percent priority area to 75 percent outside priority area split. Five comments suggest a phase-in approach, starting with more funds to outside priority area and progressively reaching the 75 percent to priority areas in three years. Seven comments suggest no funding percentage should be used to allocate funds but all decisions should be based on environmental need. Two comments suggest each state should receive at least a $2 million base level for work throughout the state. *USDA believes that primarily offering the program in priority areas throughout the Nation is needed to help assure that the most environmentally sensitive areas are considered and funds are directed to the areas in most need. The use of the priority area concept focuses assistance on those areas that pose the most serious threats to soil, water, and related natural resources, including wildlife habitat and natural resources on grazing land and wetlands, and to make environmental enhancements.*

The Department intends to provide more funds where the natural resource and environmental need is greatest but does not intend on having a prescribed percentage or formula published in the final rule because this will limit the Department's ability to respond to changing conditions and needs. However, for FY 1997, at least 65 percent of the available funds nationally will be used in priority areas. To meet future needs, the Department will move to have more funds, perhaps 75 percent or more, directed to priority areas. Providing program assistance to significant statewide natural resource concerns outside of funded priority areas will result in widespread eligibility of producers on the most important natural resource concerns. No change was made in the final rule concerning the focusing of the program in priority areas.

One comment requests that USDA honor all existing commitments to Indian tribes under the former Great Plains Conservation Program. *All contractual commitments to Indian tribes and other contract holders under the former Great Plains Conservation Program, Colorado River Salinity Control Program, Agricultural Conservation Program, and the Water Quality Incentives Program will be honored by USDA. No change was made in the final rule concerning the comment.*

Four comments request that funds should be provided to conservation districts for the administrative work they perform associated with the local work group and other program aspects. *The final rule does not require conservation districts to perform administrative duties in the program. Most of the administrative work will be performed by FSA and the FSA county committees. The final rule enables, but does not require, conservation districts to participate on local work groups and to approve conservation plans which will be used as the basis for EQIP contracts. This is done to meet the spirit of the Congressional Conference Managers who wrote in their Conference Report ''In particular, Congress intends for the Secretary to acknowledge and maintain the historic role of conservation districts in assessing natural resource priorities, approving site-specific conservation plans, and coordinating the delivery of federal conservation programs at the local level.'' The Department does not intend to reimburse conservation districts for their involvement on local work groups or their approval of conservation plans. No change was made in the final rule concerning the comments.*

One comment suggests the Chief should reject or not approve funding to any State-approved priority area, statewide concern, or national conservation priority area that fails to target efforts to the most pressing environmental problems. *The Department agrees with the comment and intends on providing program funds where the natural resource and environmental need is greatest and where the program can be used most cost-effectively. No change was made in the final rule concerning the comment.*

USDA also received six comments on miscellaneous aspects of fund management that were not described in the proposed rule or its preamble. *USDA will consider these comments as it develops its program guidance documents.*

Section 1466.6 Conservation Plan

USDA received nine comments supporting the development and use of conservation plans as described in the proposed rule. One comment opposes the development of plans as a program requirement. *The 1996 Act requires program participants to implement a plan in order to receive program assistance. This provision was incorporated in the proposed rule and no change was made in the final rule concerning the comments.*

Two comments suggest the final rule should include more precise criteria and definitions concerning the acceptability of conservation plans. *The Department will incorporate criteria concerning acceptability of conservation plans in its program guidance documents. No change was made in the final rule concerning the comments.*

USDA received one comment requesting NRCS to develop all conservation plans after a producer applies for the program. Another comment states a farmer who must hire someone to write a detailed plan should have some assurance they will be considered for program payments. *The 1996 Act requires program participants to submit to the Secretary for approval a plan that incorporates conservation practices and is based on such principles as the Secretary considers necessary to carry out the program. Additionally, the 1996 Act requires the Secretary to ensure that the processes of writing and developing proposals and plans for contracts are open to individuals in the agribusiness sector. These provisions were incorporated in the proposed rule and the Department believes that requiring all conservation plans to be developed by NRCS would be inconsistent with the statute. NRCS will, however, be available to provide an eligibility assessment of the farming or ranching operation of the producer as a basis for developing the plan. Additionally, NRCS will be available to assist producers develop conservation plans if requested. No changes were made in the final rule concerning the comment.*

One comment suggests the plans should be called ''EQIP plans.'' *The term ''conservation plan'' is used to reinforce the concept of a single plan for all natural resource conservation activities on a farm or ranch unit of concern. In the past, specific program plans have been developed on the same farm or ranch and, occasionally, the specific plans were in conflict or confusing to the producer. A single conservation plan, if requested by a producer, will help to reduce the potential conflicts and confusion, and will reduce the administrative burdens on the producer. No changes were made in the final rule concerning the comment.*

Two comments suggest the use of the term ''unit of concern'' was confusing. One of these commenters recommended

revising the wording in paragraphs 1466.6(a) and 1466.6(e) to read ''for the farm or ranch unit of concern.'' *USDA agrees with the comments and have changed paragraphs 1466.6(a) and 1466.6(e) in the final rule.*

USDA received one comment recommending a provision be made for a participant to revise a conservation plan (and contract) if necessary to reflect changes in the farm or ranch operation, conservation needs, or schedule of implementation. *The recommended provision is commonly provided for in all Departmental conservation program guidance and will be included in the program guidance documents for EQIP. No changes were made in the final rule concerning the comment.*

USDA received three comments concerning the role of conservation districts in approving conservation plans. Two comments express appreciation for conservation districts approving all conservation plans used in the program. One comment opposes the conservation district role of approving conservation plans. One comment suggests conservation districts should have a role in approving revisions to conservation plans and should have a role in the event a plan is appealed by a participant at a later date. *The Department believes the provision for conservation districts approving conservation plans as a part of the program maintains the historic role of conservation districts approving site-specific conservation plans. Conservation districts will also approve revisions to conservation plans. Roles of agencies during the appeal by a participant of a determination affecting participation are identified in parts 11 and 614 of this title. In its role during appeals, NRCS may consult with the conservation district. No changes were made in the final rule concerning the comments.*

USDA received one comment suggesting paragraph 1466.6(a)(1) be revised to indicate that natural resource concerns will include crop pest concerns. Another comment suggests paragraph 1466.6(a)(2) be revised to indicate that that resource management systems will include pest management systems. *USDA does not believe the suggested revisions are needed. While EQIP will not fund normal and routine farming practices which simply protect crop production, crop pest concerns may create natural resource concerns which EQIP may appropriately address. Likewise, pest management systems, such as integrated pest management, may be considered a resource management system where the adoption of such system would not likely occur absent program assistance and its implementation could yield significant environment benefits. Therefore, the Department did not make changes to the final rule concerning these comments.*

USDA received two comments suggesting paragraph 1466.6(a) should include the words ''including grazing lands, wetlands, or wildlife habitat'' to further describe the related natural resources. *USDA added a definition of ''related natural resources'' which incorporates the suggested words and believes this adequately addresses the comments.*

USDA received one comment suggesting a provision in paragraph 1466.6(a)(2) to allow conservation plans to vary from the NRCS field office technical guide as needed to foster higher value wildlife habitats. *A conservation plan submitted by a participant may foster higher value wildlife habitats or other resource management system, or some portion of that system, than identified in the applicable NRCS field office technical guide. NRCS, as provided in paragraph 1466.6(a)(1), will consider whether the participant will use the most cost-effective conservation practices to maximize the environmental benefits. No change has been made to the final rule concerning this comment.*

USDA received numerous comments concerning the level of treatment that should be required in the program. Three comments suggest total resource management systems be required. Three comments oppose a requirement for total resource management systems. Five comments support encouragement to achieve a resource management system and use of a flexible, progressive planning approach. *The Department believes that the program should provide flexibility to participants who desire to implement one or more conservation practices which impact a range of natural resource concerns. The program has been designed to encourage, but not require, the voluntarily implementation of a total resource management system. However, the number of natural resource concerns incorporated into a conservation plan will not, in and of itself, justify special priority treatment. The conservation plan, whether addressing a single natural resource concern or several, must result in significant environmental benefits to justify the expenditure of EQIP funds. No change has been made to the final rule concerning these comments.*

One comment recommends conservation plans should not focus exclusively on the priorities identified in a priority area or on the significant statewide natural resource concerns, but other concerns should also be addressed. *To meet the purpose and intent of the program, the Department believes the conservation plans submitted by participants must address the priority natural resource concern in the priority area or the significant statewide natural resource concern outside a funded priority area if natural resource conservation goals and objectives in a priority area, a State, or the Nation are to be achieved. Directing program funds to address other concerns will divert funds from higher priority natural resource concerns. No change has been made to the final rule concerning this comment.*

A tiered, multi-level approach to financial assistance is suggested in two comments. This approach would establish a lesser amount of payments (i.e. up to $5,000 per year) for participants who develop a conservation plan with one or two practices to address a single concern. The second level would allow more payments (i.e. up to $7,500 per year) for participants who develop a whole farm conservation plan with resource management systems to address multiple concerns. The highest level would allow the maximum payments (up to $10,000 per year) for using the second level plan plus incorporating a well-designed, on-farm demonstration or research project. *The Department believes the suggestion is a creative manner of providing financial assistance that encourages increased level of treatment to address priority natural resource concerns. The suggestion, however, provides for payment restrictions that are not supported by the 1996 Act, nor do they relate to the actual cost of implementing conservation practices. The Department believes that the proposed rule also provides for voluntary encouragement for increased level of treatment to address priority natural resource concerns without restricting payments arbitrarily. The concept of the suggestion will be incorporated in the program guidance documents. No change has been made to the final rule concerning these comments.*

USDA received numerous comments concerning the use of whole farm or ranch plans. Ten comments suggest that whole farm or ranch plans should be required to be eligible for the program. One comment suggests whole farm and ranch planning should be the focus of plans for the program or, at the least, to reward participants who develop whole farm or ranch plans. Eleven comments oppose requiring whole farm or ranch

plans. Seven comments suggest the program should be used to encourage, but not to require, the development of whole farm or ranch plans by providing a higher ranking to applications, payments for developing such a plan, or providing higher payments to implement the plan. *The 1996 Act enables a participant to implement one conservation practice using EQIP. The Department believes that in order to meet this statutory requirement a whole farm or ranch plan should not be required. However, the program has been designed by the Department to provide for flexibility in carrying out the program. Participants will be encouraged, but not be required, to voluntarily develop a whole farm or ranch plan. The conservation plan will address the conditions that cause or influence the natural resource concern for which the plan is being developed. Therefore, even when a whole farm or ranch plan is not developed, information from outside the defined unit of concern may be considered where it is necessary to develop the best strategy for meeting the producer's objectives and resolving the natural resource concern. Participants who submit a whole farm or ranch plan that maximizes environmental benefits per dollar expended will likely be assigned a higher priority for a contract than would participants who do not submit such a plan. The likelihood of being assigned a higher priority depends on whether the plan will result in significant environmental benefits to justify its priority.*

Ten comments concerned who may provide technical assistance to a participant for the purposes of developing a conservation plan. Nine of the comments support the latitude given to participants to select the service provider. Several of these comments also suggest specific service providers, such as professional foresters, certified crop advisors, and other qualified organizations. One comment states no plan should utilize the products or services sold or owned by the private agribusiness developer of the plan to avoid bias in the plan. *The Department believes that the provisions in paragraph 1466.6(b) of the proposed rule provide the flexibility that the participant needs to select a service provider that is qualified. The provision refers to cooperating agencies, private agribusinesses, and other organizations, and the Department believes that more specific identification is not required. The Department further believes that the program will have sufficient safeguards and oversight so that any bias that may be created by private agribusinesses or other organizations providing technical assistance services will not cause a misuse of program funds. No change was made in the final rule concerning these comments.*

One comment states paragraph 1466.6(b) implies that producers must submit a plan in order to receive technical assistance, and this should be removed. *The first sentence of paragraph 1466.6(b) of the proposed rule stated ''Upon a participant's request, the NRCS may provide technical assistance to a participant.'' The Department does not intend to imply that a producer must first submit a plan to receive technical assistance. A participant must request NRCS to provide the technical assistance, including the development of a conservation plan, if that is the desire of the participant. No change was made in the final rule concerning this comment.*

One comment suggests the final rule provide more clarity on the procedures NRCS will use to address private sector requirements and approval of assistance. *Due to the varying complexities of the technical assistance services that may be provided by non-NRCS personnel, the Department does not believe that program regulations are the most appropriate way to establish these procedures. The program guidance document being developed by the Department will include guidance concerning acceptance of conservation plans, requirements of the private sector and other service providers, and approval of the technical adequacy of work done by non-NRCS personnel. No change was made in the final rule concerning this comment.*

USDA received several comments concerning the use of NRCS field office technical guides (FOTG) for conservation practices. Four comments support the use of the FOTG for conservation practices and methods. Nine comments state the FOTG's are either too narrow in scope or require updating and revising in a timely manner to reflect current conservation practices and technologies, and one of these commenters suggest NRCS should use other documents or references which provide more up-to-date information. Two comments suggest NRCS should assure that FOTG information is shared and consistent across state lines and the NRCS Regional conservationists could be used to assure this happens. Two comments promote involvement of private industry, State, and Federal agencies in the development of FOTG information. One comment asks what standards are used to determine if a natural resource has been protected or improved. *The NRCS FOTG is a dynamic technical document. The FOTG contains the standards for the conservation practices which may be funded in the program. It also includes a section containing many references and documents published by non-NRCS sources, including private agribusinesses and research institutions. NRCS intends to review, on a regular basis, the content of the FOTG to assure that they include the most current elements of conservation practices, including innovations and new technologies. To assist with maintaining the most current elements of conservation practices, including innovations and new technologies, NRCS welcomes the information and input from producers, natural resource conservation professionals, scientists, and the private agribusiness sector. This review, update, and revision is a part of the overall conservation technical assistance activities of NRCS and is not specific to EQIP. In recognition of the rapid change of technology, paragraph 1466.7(a)(3) of the rule provides for pilot work using new technologies or conservation practices. No changes were made to the final rule concerning these comments.*

Ten comments concern the contents of a conservation plan. Two of the comments support the list of conservation plan contents. Two comments suggest the landowner's primary and secondary objectives should be included. One comment states forest types should be included in the plan. Five comments suggest monitoring and evaluation mechanisms must be components of each plan so that outputs can be measured. *The Department believes that an evaluation mechanism is needed so that the outputs and outcomes of each conservation plan, each priority area and natural resource concern, and the entire program can be measured. Each conservation plan will contain information which can be used in the evaluation mechanism. NRCS and FSA will each be using automated data collection systems to assist in the evaluation of the program at all levels. The natural resources identified in sentence 1466.6(e)(2) are intended to be illustrative and are not all-inclusive. Sentences 1466.6(e) (3) and (4) have been amended in the final rule to identify the objectives as those of the participant.*

On the subject of a simplified conservation planning process, seven comments support the proposed rule provision for a single conservation plan. One comment suggest the single plan could include government regulatory

requirements. Another comment suggest that the process should assure participants that the single plan will be recognized by other Federal regulatory agencies. One comment encourages the use of broad-scale planning efforts so that a separate individual plan development and approval process would not be needed when the individual plan is consistent with the broad-scale plan. *The Department will work with Federal regulatory agencies to provide a mechanism for a single conservation plan which they will recognize for their purposes. USDA agrees that the conservation plan development and approval process can be further simplified where broad-scale plans have been developed and is using its conservation programs to encourage the development of such plans. The final rule has been amended to indicate that a single conservation plan could contain government regulatory requirements, to the extent possible.*

One comment suggests paragraph 1466.6(f) be amended to indicate that a single conservation plan could incorporate tribal program requirements. *The Department agrees and has incorporated the suggestion in the final rule.*

Twelve comments state the conservation plan and supporting documentation must be considered as confidential information. Without confidentiality of the records producers will be reluctant to participate in the program. *CCC has determined that conservation plans and certain supporting documentation developed or submitted for EQIP purposes are Federal records and, as such, are subject to the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act of 1974, 5 U.S.C. 552a. Requests for records will be reviewed under normal rules that apply to such information, with all due concern given to the desire for confidentiality. No amendment was made to the final rule concerning these comments.*

Section 1466.7 Conservation Practices

USDA received 13 comments in support of providing financial assistance for needed conservation practices. Another comment supports financial assistance for upgrading or enhancing existing practices used by participants. *A participant may receive financial assistance for enhancing an existing practice if the existing practice has exceeded its useful life span or if the enhancement provides for substantive improvement in the practice so that it provides a greater impact on the natural resource concern and maximizes environmental benefits per dollar expended. The program guidance document will incorporate this provision and no change has been made to the final rule concerning these comments.*

One comment opposes providing financial assistance for vegetative practices. *The 1996 Act provides for cost-share assistance for ''structural'' practices which includes vegetative practices. The Department believed it was confusing to describe vegetative practices as ''structural'' and incorporated a definition of both structural practice and vegetative practice in the proposed rule. The Department believes the 1996 Act intended to authorize financial assistance for vegetative practices and, therefore, included this provision in the proposed rule. Vegetative practices often provide the most cost-effective conservation alternative to address certain environmental concerns and many structural practices, such as grassed waterways and terraces, incorporate vegetative treatment in the practice. No change has been made in the final rule concerning this comment.*

Seventeen comments express support for financial assistance for various conservation practices, including: water storage pits, pipeline installation, cross-fencing in pastures, vegetative buffers, conservation tillage, livestock watering facilities, pest management, noxious weed management, riparian area protection, wellhead protection and sealing, terraces, controlled drainage, agricultural chemical mixing and storage facilities, oil recycling, tile set-backs, precision farming, fuel storage containment dikes, forage storage leachate control, waste utilization and composting equipment, composting, sustainable farming practices, and grassed waterways. *USDA believes these are examples of conservation practices which may be eligible in EQIP where they provide environmental benefits. To be eligible, the practice must provide the most beneficial, cost-effective approaches for participants to change or adapt operations to conserve or improve natural resources or to provide for environmental enhancement. Conservation practices must meet NRCS standards in accordance with the applicable NRCS field office technical guide. No change has been made in the final rule concerning the eligibility of conservation practices.*

USDA received two comments in support of practices that were eligible under the former USDA conservation programs. *Conservation practices eligible in the program to address the natural resource concerns will be identified at the local and State level. Conservation practices which were eligible in the former USDA conservation programs may be eligible if determined to be appropriate to address the priority natural resource concerns. No change has been made in the final rule concerning eligibility of conservation practices.*

USDA received 85 comments which oppose financial assistance for construction of animal waste storage facilities. Most of these comments oppose financial assistance specifically to open lagoons citing problems with odors and leaks. These include 33 comments which oppose funding lagoons for large confined livestock operations but express support for funding other livestock-related conservation practices, such as composting, nutrient management, rotational grazing, pasture management, nutrient testing, and riparian area protection. Three comments agree that financial assistance should be used for construction of animal waste storage facilities, including lagoons. One comment opposes providing 100 percent of the cost to construct manure handling systems. One comment suggests reduced cost-share rates should be given to manure storages as compared to other practices. *The 1996 Act did not limit financial assistance for construction of animal waste management facilities, except for those constructed by a producer who owns or operates a large confined livestock operation. However, the Department believes that placing an emphasis on low-cost practices which yield significant environmental benefits will better achieve the statutory goal of maximization of environmental benefits per dollar expended than a focus on high-cost practices. The Department believes animal waste management facilities are viable conservation practices that, when used in combination of other conservation practices, such as nutrient management, can provide the most cost-effective system for managing animal wastes to address natural resource concerns. Neither the proposed or final rule provides financial assistance of up to 100 percent of the cost of animal waste management facilities but limits the cost-share rate at 75 percent. No change has been made in the final rule concerning these comments.*

USDA received 28 comments in support of manure and nutrient management systems and other livestock-related conservation practices in lieu of providing cost-sharing for manure storages such as lagoons. Twenty-seven comments express support for financial assistance for

conservation practices relating to wildlife habitat, including eleven in support of native plants to aid with wildlife habitat. USDA received 19 comments in support of tree planting, reforestation, or other forestland management measures as eligible conservation practices and another 22 comments were in support of windbreaks and shelterbelts. *The proposed rule provides for land management practices, such as nutrient management, manure management, and wildlife habitat management, for incentive payments, and for cost-sharing of vegetative practices for critical area plantings and permanent wildlife habitat. NRCS vegetative practice standards provide for use of native plants. The conservation practices listed in the rule are for illustrative purposes only and are not intended to be an exhaustive list of eligible practices. Conservation practices eligible in the program to address the natural resource concerns will be identified at the local and State level. Conservation practices may be eligible if determined to be appropriate to address the priority natural resource concerns. Tree planting is a vegetative practice and has been included in that definition. No further changes were made in the final rule concerning these comments.*

Seven comments support the proposed rule process for determining conservation practice eligibility, especially involving State technical committees and local work groups. *No changes were made to the final rule concerning these comments.*

One comment expresses the need to have public comment, through a public notice procedure, on proposed eligible practices in a priority area or state. Another comment expressed the need to involve private agribusinesses in this process. *The public and private agribusinesses will have the opportunity to provide input to the local work group on eligible conservation practices. No changes were made to the final rule concerning these comments.*

Twenty-four comments express support for the proposed pilot work for new technologies and practices. Of these comments, three indicate support for the involvement of others in the pilot testing, such as wildlife specialists, private agribusinesses, producers, and producer organizations. Four commenters indicate alternative livestock practices, pilot programs and on-farm research and demonstration components should be used in EQIP as a means to encourage the use of innovative conservation practices. Two comments express the need to expedite the approval procedure for interim conservation practice standards used on pilot activities. One comment suggests incentives should be provided to users of environmental assessment tools, such as Farm*A*Syst. Another commenter stresses a key to successful implementation of EQIP is flexibility in terms of allowing participants and conservation partners to develop and implement unconventional methods or practices that could spark enthusiasm for the program. *No change has been made in the final rule. NRCS will approve interim conservation practice standards used for pilot work in a manner that allows for timely implementation. The use of environmental assessment tools are encouraged by the Department as a part of the conservation planning process for EQIP, other conservation programs, and conservation planning in general. NRCS State conservationists, using the advice of State technical committees, will determine which conservation practices are needed and are eligible for program payments.*

USDA received the most comments concerning the issue of defining large confined livestock operations for the purposes of providing cost-share payments for construction of an animal waste management facility.

USDA received 161 comments in favor of a national definition of large confined livestock operations of 1,000 animal unit (AU) equivalents. These commenters favor this option primarily because it will provide greater funds to small and moderate farms and ranches and it is consistent with the size requirements for non-point discharge elimination system permits. Six of the commenters also suggest NRCS State conservationists should be encouraged to lower the size limit to fit circumstances in the state, such as State regulations. Three of the commenters suggest the size limit should be less than 1,000 AU in many circumstances.

USDA received several comments which suggest a variety of size limits be established as the national definition. One comment suggests limits of 400 beef cattle, 280 dairy cattle, 40,000 poultry, and 1,000 hogs. One comment favored a 500 beef cattle and 250 hog limit. One comment suggests a 800 beef cattle and 1,000 hog limit. One comment favors a 2,000 hog limit. One favors a single national definition but offers no suggestion on what the definition should be.

Two comments suggest the aggregate total of animals owned by a farmer or rancher at all locations should be the basis for defining a large livestock operation.

USDA received 22 comments which suggest no program funds should go to ''publicly-held'' or ''investor-owned'' corporations. Program funding to only small and moderate farms and ranches is favored by 63 comments.

USDA received 22 comments that state NRCS State conservationists could not or should not decide the definition. A variety of reasons were given in these comments, including five comments about the pressure that would come from inappropriate lobbying by livestock producers; four comments thought the NRCS State conservationist was a State government official; three comments express concern that unfair competition will be created between States due to different definitions; and three comments oppose different definitions in each State.

USDA received 29 comments which favor the proposed rule procedure for defining large confined livestock operation. One of the commenters also recommends allowing exceptions to the State-level definition. One of the commenters suggests the State conservationist could decide up to a limit of 8,000 animals (animal type was not stated). One of the comments also suggests that no more that 20 percent of the livestock operations in a State should exceed the defined limit. Two of the commenters suggest a gross income level of $2 million be used to determine large.

USDA also received 32 comments which favor no size limits be established for large confined livestock operations. Most of these comments recommend the program emphasize environmental benefits rather than size when deciding who should receive payments.

Under provisions of the 1996 Act, producers with ''large confined livestock operations'' are not eligible for cost-share payments on animal waste management facilities, but are eligible for technical assistance on these facilities and program assistance on other conservation practices. The 1996 Act leaves the determination of ''large confined livestock operation'' to the Secretary. In considering how to define large livestock operations, CCC considered the public and agency comments and explored a number of options.

CCC considered establishing a national 1,000 AU threshold, with some exceptions authorized, using the consideration elements specified in the Conference Manager's report. The 1,000–AU threshold was considered because it is employed in the National Pollution Discharge Elimination System (NPDES), authorized by the Clean Water

Act, and used by the Environmental Protection Agency (EPA). This option offers some advantages, because it is consistent with the NPDES, and most family and small-to moderate-size farms are under this threshold and will be eligible for cost-sharing. This option would target more program funds to smaller operations, reduce funds to large operations, and provide flexibility to address State and local environmental needs when exceptions are granted. However, CCC believes this option lacks sufficient flexibility to address State and local variations in operations, creates an exaggerated discrepancy between the implementation of this provision with the overall program goal to maximize environmental benefits per dollar expended, and relates only indirectly to the likelihood that the livestock producer would not otherwise construct a waste management system.

Another option considered was to base the national definition on the amount and environmental threat of manure and other animal waste generated in the confined livestock operation. Although this option would allow choices more closely related to the environmental issues and problems resulting from the animal manure, it also uses a complex and easily challenged process of defining thresholds by weight, volume, or environmental threat.

A third option considered was the use of an economic achievability analysis, which considers the ability to pay for measures to meet environmental objectives. One such analysis is that conducted by EPA, the ''Economic Impact Analysis of National Nonpoint Source Management Measures Affecting Confined Animal Facilities,'' which was completed in 1995. This type of analysis will most likely result in defining the term ''large'' differently for different animal types. EPA's analysis indicates that dairies with 98 AU or more can generally afford to implement animal waste runoff and storage systems without cost-shares. Thresholds for other animal types, as identified by EPA, are: beef feedlots, 300 AU; horse stables, 400 AU; poultry broilers and layers, 150 AU for liquid manure systems, 495 AU for continuous overflow watering; turkeys, 2,475 AU; and swine, 80 AU. This option would be most sensitive to a producer's ability to pay for needed facilities and would make more program funds available to small operations. It would also provide flexibility to address State and local environmental needs. However, there are problems inherent in translating national level data to State and local conditions. Some operations with high potential for environmental benefits would be eliminated from program eligibility. It would be more restrictive toward hog and dairy operations because of the very low threshold levels. If EPA's analysis were used as the basis for determining eligibility, an estimated 45 percent of dairy farms and 20 percent of hog farms would not be eligible. Another problem with this approach is that producers would be required to provide financial records or other evidence of their inability to pay without financial assistance.

A fourth option considered was that an operation would not be eligible for program cost-share funds if the animal waste management facility requires a NPDES permit. No exceptions to this limit would be authorized because its proponents believe that the necessity for a permit is all the incentive that a producer needs to install an animal waste management facility. This option was not accepted because it would provide no flexibility to address State and local environmental needs. Further, EPA has determined that a totally enclosed animal waste management facility with no discharge (and no anticipated or potential discharge) of animal waste to waters of the United States is not subject to the NPDES program. This would make certain ''large'' operations eligible for cost-shares, regardless of a person's ability to pay.

Therefore, having considered all these options and the comments received on the proposed rule, CCC has chosen to not use a hard and fast animal unit number nationally to define a large livestock operation. CCC will consider producers with 1,000 AU or less as eligible for financial assistance for animal waste management facilities if otherwise eligible based on the intent of the program to maximize environmental benefits for dollars spent. The NRCS State conservationist, in consultation with the State technical committee, may develop criteria to use when defining a large confined livestock operation. This State-level definition will be used to determine eligibility for receiving cost-share payments for animal waste management facilities. CCC will provide national guidance, developed by NRCS in consultation with other Federal agencies, to NRCS State conservationists to clearly specify the factors and considerations involved in developing the requirements for program eligibility. The criteria will provide consideration of the elements specified in the Conference Manager's report cited above, including the cost-effectiveness of the application, the ability of producers to pay for such facilities without financial assistance, the significance of the natural resource concerns resulting from the operation, and the prevailing State, tribe or local implementation of environmental laws, such as the Clean Water Act. In considering this definition, priority emphasis will be placed on assisting family farmers and ranchers, especially small- and medium-scale producers, and not meatpackers, processors, and vertical integrators. Small- and medium-scale family farms and ranches that have contracts with meatpackers, processors, and vertical integrators would be eligible. A variable cost-share rate could be considered at the State level, so that limited resource farmers and small-scale operations would receive a higher Federal cost-shares.

The NRCS State conservationist's definitions must be approved by the Chief, who will consider the justification of the definition and consistency in the definitions, to the greatest extent possible, used between and among States.

All participants who receive cost-shares to install animal waste management facilities must follow an approved animal waste management plan in accordance with NRCS conservation practice standards, which may require the use of a nutrient management plan, including the satisfactory use, treatment, or disposal of animal wastes. When determining the number of livestock in the participant's operation for eligibility purposes, the total number of animals confined at all locations of the participant's livestock operation will be used, not just the animals at the site of the proposed animal waste management facility. The average annual number of livestock in the operation, for the 12-month period before making application, will be used for this calculation. This places an emphasis on the economic factors associated with the livestock enterprise, especially reflecting the ability to pay for the conservation practice. Also, guidance will be provided on using EQIP funds to cost share animal waste management facilities for expanding and new livestock operations. While such use of funds would be permitted, guidance will emphasize that NRCS State conservationists should place the highest priority on the most significant natural resource concerns and that they have the flexibility to place higher priority on assistance to existing livestock operations. Livestock operations that expand to the level contained in the State-defined definition of a large confined livestock operation would not be eligible for cost-

share assistance for the animal waste management facility. The Chief will report to the Secretary periodically on the implementation of this policy, especially on the impact that may be occurring to the environment and to the structure of livestock agriculture. The report, submitted to the Secretary every six months for the first two years the program is implemented, will be based on information received from the NRCS Regional and State conservationists, and from other sources.

CCC believes this option provides significant flexibility for State and local decision-makers, where the needs of the environment and the livestock operator are best determined, and thus best meets the intent of the 1996 Act. This method will provide the program with the maximum ability to resolve environmental problems in priority areas and other locations where the program is delivered. It also incorporates the consideration of a person's ability to pay, regardless of the size of the operation. This option considers prevailing State or local implementation of various Federal, State, and tribal environmental authorities and requirements, including the Clean Water Act and other water quality authorities. It will allow CCC to consider modern livestock operation characteristics, which vary depending on types of livestock, marketing strategies, geography, and State and local economic factors, from a State and local perspective.

Section 1466.8 Technical and Other Assistance Provided by Qualified Personnel Not Affiliated With USDA

USDA received 16 comments that express support for allowing the use of technical and other assistance from entities outside of USDA. Two comments suggest the use of planning grants as a means to obtain assistance from other entities and one comment suggests a finder's fee be available for any assistance provided for the identification of potential program participants. Six additional comments urge USDA to include specific mention of particular qualified personnel or agencies available to provide technical assistance, such as mention of tribal agencies, agriculture input retail dealers, biologists, and qualified individuals. *USDA believes flexibility for technical assistance will increase the utility of the program for addressing natural resource concerns. USDA does not have the authority to make planning grants or provide finder's fees. USDA utilized broad language in the proposed rule to increase the flexibility of the program and believes that mention of particular entities is unnecessary. No changes have been made in the final rule concerning these comments.*

USDA received fourteen comments that suggest the participant's cost for technical assistance from non-USDA sources be paid with EQIP funds. Four additional comments indicate USDA should reflect the reduced agency costs in overhead resulting from the use of non-USDA sources of technical assistance. One comment states EQIP funds should not be used for the technical assistance provided by non-USDA sources. Six comments request USDA provide funding for the services provided in EQIP by conservation districts and four comments simply request USDA explain in greater detail how it will contract to pay for technical assistance provided by non-USDA sources. *USDA encourages the use of non-USDA sources of technical assistance, including private sources, but does not agree that EQIP technical assistance funds should be provided to participants who chose to use technical assistance provided by non-USDA sources. Participants have the flexibility to use the services provided by private sources, NRCS, conservation districts, State and local government agencies, and other qualified natural resource professionals. Many of these sources of assistance provide the technical assistance using other forms of tax-payer support. USDA does not agree that conservation districts should be paid with EQIP funds for administrative or planning services provided as a member of the local work group. In those instances where NRCS is requested by a participant to provide technical assistance, and NRCS is unable to provide that technical assistance, NRCS has the ability to use qualified non-USDA personnel through contracts with private sources or through cooperative agreements with other Federal, State, or local government agencies as authorized in § 1466.6(b). No changes have been made in the final rule concerning these comments.*

The Department received 16 comments regarding the standards it will use to assess the quality of technical and other assistance provided by outside sources. The breakdown of these 16 comments is as follows: 2 comments expressly support NRCS oversight of the technical assistance provided by outside sources; 2 comments suggest the conservation district should assume that responsibility; 4 comments recommend Certified Crop Advisors should be authorized to submit field and whole farm nutrient and pest management plans for EQIP; 1 comment states ''certification, benchmark standards or other additional demonstrations of knowledge'' do not belong in USDA rules and procedures; 2 comments suggest the final rule provide greater clarity about any qualifications that NRCS will require; 3 comments suggest NRCS establish a certification process or conduct qualification workshops; and 1 comment states technically qualified organizations should be qualified as organizations eligible to provide technical assistance. *NRCS intends to hold personnel from non-USDA agencies and private sources of technical and other assistance to the same standards or criteria it expects from USDA employees. At this time, since adequate certification programs are available from other sources, NRCS does not intend to establish a certification process and generally will accept the certification provided to professional conservationists by other organizations. Qualified personnel from agencies and groups not affiliated with USDA will be expected to have knowledge of how the program works and the requirements of the program. NRCS may provide training to personnel from other agencies and groups about the program and its requirements either individually or in workshops. No changes have been made in the final rule concerning these comments.*

Section 1466.20 Application for Contracts and Selecting Offers From Producers

USDA received one comment which suggests that ''shall'' be replaced with ''may'' throughout this section. *USDA believes the agencies have sufficient discretion to administer EQIP in a flexible manner to meet varied resource needs, and, therefore, sees no need to replace the word ''shall'' with ''may'' in § 1466.20.*

USDA received six comments regarding the submission of applications. Of these six comments, one comment supports the ability to sign up at the USDA service center, three support the continuous sign-up process, one comment requests USDA clarify how often the agencies will rank applications, and one comment inquires when the continuous sign-up would commence. *USDA believes the announcement of sign-up periods, the timing, and frequency of application ranking is contingent on the specific logistical requirements of each approved priority area and significant statewide natural resource concern. It is imperative that enough flexibility be in place to address varying farming and ranching regimes throughout the*

country. No changes have been made in the final rule concerning these comments.

USDA received 13 comments regarding the application process. Of these 13 comments, 10 raise questions and concerns regarding any proposed ''bidding'' process, including whether there would be bidding. Two comments raise concern regarding the length of the application and ranking process and urge timely approval be given. One comment indicates a producer does not become a participant until the application has been approved, yet it is unclear at what time a producer assumes rights and obligations under a contract. *Section 1466.20(a) indicates that any producer with eligible land may submit an application for participation in the program. The Department expects to receive far more applications for participation than existing funding levels can accommodate. Therefore, the Department will select projects through a competitive process, though not necessarily a bidding process. Applications are ranked on a number of factors, cost being only one of the factors considered. Because the competitive process aims to achieve maximization of environmental benefits per dollar expended, an applicant can improve the attractiveness of the proposed project by electing to accept lower program payments than authorized or by developing a management system that increases the project's environmental benefits.*

It is not USDA's intention to create a process that will take an excessive amount of time from date of application to the commencement of work on a project. However, all practices and conservation plans are different; some practices require an extensive investment of time in planning, designing, and engineering a structural practice, e.g. animal waste management structure. NRCS may contract for technical services if the workload is such that timely approval is not otherwise possible. The producer is a participant and has legally enforceable rights and responsibilities under an EQIP contract when the contract is executed by the producer and the USDA. No changes have been made in the final rule concerning these comments.

USDA received three comments regarding the role of the State technical committee in the ranking process. Of the three comments, one comment supports the involvement of the State technical committee, one comment disagrees, and the third comment requests any advice provided by the State technical committee be available for public comment. *USDA intends to allow State technical committees to recommend to NRCS State conservationists guidelines for developing ranking criteria for evaluating applications that are consistent with the criteria set forth under § 1466.20. Local work groups will develop additional criteria within these statewide parameters to address local natural resource concerns. Guidelines developed at the state and local level will be available for public review and opportunities will be available for pubic input. No changes have been made in the final rule concerning these comments.*

USDA received five comments regarding the role of the local work groups in the development of ranking criteria. Of these five, two comments requests clarification regarding the actual role of the local work groups and three comments request local work groups apply ranking criteria in addition to developing the criteria. *USDA feels the current language adequately addresses the commenter's concerns. The local work groups and their members recommend ranking criteria but do not have a vote in the approval process. The FSA county committee, with assistance of the NRCS designated conservationist and the FSA county executive director, shall use the ranking criteria and grant final approval for a contract.*

USDA received 48 comments regarding the respective roles of the agencies in the ranking and application approval process. Of these 48 comments, 45 comments express concern that the FSA county committees were merely a rubber stamp and 3 comments recommend the county committee system be utilized greater in concert with the NRCS ranking system. *The administration of USDA conservation programs has moved beyond the traditional FSA committee system of approvals due to the implementation of the 1996 Act which folded the functions of the existing conservation programs into EQIP. USDA believes all of the agencies and committees with roles in the program have important responsibilities in line with their expertise, and the language in the proposed rule adequately defines the roles of the respective agencies. No changes have been made in the final rule concerning these comments.*

USDA received 14 comments regarding the ranking criteria for the selection of applications. Of these 14 comments, seven comments recommend particular factors that a ranking system should address. In particular, comments suggest including evaluating off-site and on-site benefits, credit for applicants who have installed practices under different programs, and applications that address several natural resource concerns receiving a higher ranking against those that address only one natural resource concern. Five comments discuss an environmental benefit index, including four comments which express support for the concept but caution against a national index, and one comment which did not support the concept. The two remaining comments ask how the agencies would determine cost and express the opinion that cost was an arbitrary factor to base acceptance upon. *USDA believes it is important to allow flexibility in the selection of ranking factors, both on the State and local level, to best address local natural resource needs, and does not intend to establish national level ranking factors. Ranking factors will vary between approved priority areas and significant statewide natural resource concerns. The cost of a conservation practice will be estimated by NRCS using knowledge of local practice costs collected and provided by FSA. National level direction will place emphasis on developing ranking criteria which presents the least cost to the program since the maximization of environmental benefits per dollar expended is an integral facet of the program and is clearly articulated in the statute. No changes have been made in the final rule concerning these comments.*

USDA received 26 comments regarding the impact the ranking criteria will have upon participation by tribal, minority, and limited resource farmers. Of these 26 comments, 19 comments specifically state the application and ranking process will discriminate against minority and limited resource farmers. A different comment recommends that potential discrimination could be avoided by assuring that limited resource farmers had a voice on the local work groups. One comment states the process was unduly burdensome upon tribal governments because of the requirement to list all lands under their control. Three comments raise concern that the emphasis upon cost could discourage limited resource farmers from participating because wealthier applicants would rank higher on that factor alone, regardless of which applicant has the more critical resource concern. *The statute mandates that USDA achieve the greatest environmental benefit per federal dollar expended. This does not translate into a simple calculation that applicants*

who contribute more towards the cost of a practice will rank higher. USDA focuses upon the environmental benefits achieved in the most cost-efficient manner. An applicant can improve the cost-efficiency of the proposed project in several ways, including filing a joint application with similarly situated individuals, providing like-kind services, and focusing upon an appropriately scaled solution to any given concern. USDA intends to provide guidance in program guidance documents that stresses the need to apply all program elements and activities in a manner that does not discriminate against any farmer or rancher who are potential participants in the program. No changes have been made in the final rule concerning these comments.

One comment states producers who do not have bank accounts would be excluded from EQIP participation due to the electronic funds deposit policy of the 1996 Act and alternative methods of issuing checks should be provided as a options. *In accordance with the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), payments made in Federal programs will be disbursed by electronic funds transfer (EFT). Recipients of Federal payments must provide financial institution information necessary to receive payment via EFT. Waiver of the EFT requirement may be granted by FSA through December 31, 1998, if the recipient provides a written certification that the recipient does not have an account with a financial institution or an authorized payment agent. No change was made in the final rule concerning this comment.*

Section 1466.21 Contract Requirements

Of the various contract requirements outlined in § 1466.21, USDA received the greatest number of comments regarding the statutory requirement that EQIP contracts be for not less than five years and not more than 10 years. Of the 32 comments received on this subject, six comments express support for the 5 to 10 year contract duration. One comment suggests no contract at all should be required for cost-share assistance. Three comments recommend a specific shorter duration, such as 3–10 years or on an emergency basis. Twenty-two comments state producers would not be receptive to 5–10 year contracts based on the assumption that long-term contracts are cumbersome, five-year minimum contracts are unnecessary to address single natural resource concerns, and the duration of contracts are detrimental to small-scale and limited resource farmers. *The 1996 Act requires that payments be made to participants through an EQIP contract, and the contracts be a minimum of 5 years and a maximum of 10 years. The Department cannot modify these requirements. EQIP did not combine the functions of emergency conservation programs from either FSA or NRCS into its programs. The emergency conservation program and the emergency watersheds program will likely continue in some form to address these emergency situations. No changes have been made in the final rule concerning these comments.*

USDA received eight comments that state EQIP plans should be limited to those practices being implemented for which cost-share is received. USDA believes some conservation plans do require implementation of non-cost-shared conservation practices or operations in order to ensure that cost-shared practices are functional and accomplishing the plan's stated goals in addressing the identified natural resource concerns. No changes have been made in the final rule concerning these comments.

One comment states controlling noxious weeds should be added to the list of contract requirements. *Control of noxious weeds is frequently a requirement of State or local laws and those laws can be enforced in the normal manner. No changes have been made in the final rule concerning this comment.*

USDA received 18 comments regarding the role of FSA county committees, seventeen of which suggest the rule explicitly state that FSA county committees may either approve or disapprove contracts. The remaining comment recommends county offices should have authority to modify contracts in order to transfer money from one contract to another to balance contract cost overruns with shortfalls on other contracts. *USDA feels the current language is sufficient and in accordance with the reorganization decisions made within the Department in the last two years. Program guidance will specify how unused funds may be used. No changes have been made in the final rule concerning these comments.*

USDA received three comments regarding the limitation of one EQIP contract at any one time for each tract of agricultural land. Of these, one comment proposes allowing the local work group flexibility to define areas of natural resource concerns, one comment proposes all properties owned by a single person be counted as one, and the third comment expresses the concern that this requirement would create a paperwork nightmare. *USDA believes the current FSA method used to classify farm and tracts should be used to monitor where EQIP contractual activities are undertaken as it is with other USDA conservation programs. FSA has an existing database that will enable this requirement to be easily tracked, thus avoiding a paperwork burden. No changes have been made in the final rule concerning these comments.*

One comment requests CCC to commit the funds up-front that will be needed for a 5-year contract and that such funds would be unavailable for other purposes. *When contracts are agreed to by CCC, payments become an obligation of the CCC for the full contract period within the limits of the CCC's borrowing authority which is fully expected to be sufficient to cover all obligations. There is no provision in the law specifying a special priority for EQIP, or other claims, over other legitimate claims on CCC funds. Accordingly, it was determined that the portion of this comment to prioritize EQIP over other uses should not be adopted. No changes have been made in the final rule concerning these comments.*

USDA received five comments requesting § 1466.21(c) be revised to allow for a producer to complete the first practice of the contract to be completed within 24 to 36 months, instead of 12 months. *USDA believes it is in the best interest of the program to obtain tangible conservation benefits as soon as possible during contract periods, and to be assured the participant intends to comply with the contract. The best way to achieve this is to actually install or implement conservation practices in the beginning of the contract period. No changes have been made in the final rule concerning these comments.*

Section 1466.22 Conservation Practice Operation and Maintenance

A commenter inquires if the lifespan of a conservation practice is greater than 10 years, how will USDA ensure the participant will continue to operate and maintain the practice in accordance with this section. Another comment states this section should be more explanatory in regards to participant accountability and follow-up of EQIP contracts to ensure that taxpayer resources are accomplishing the objectives in the contracts. *Section 1466.22 has been revised in the final rule to state that CCC may periodically inspect the conservation practices with life spans that exceed the contract*

period to ensure that operation and maintenance is occurring.

One commenter requests ''unless a catastrophic event occurs'' be added to the end of the second sentence in § 1466.22. *Paragraph 1466.25(b)(3) of the proposed rule enables CCC to give consideration to hardships that prevent the participant from complying with the contract terms that are beyond the participant's control. USDA believe this adequately addresses the comment and no change has been made to the final rule concerning this comment.*

Section 1466.23 Cost-Share and Incentive Payments

Two comments stress financial incentives are an important part in encouraging farmers to adopt practices that work best on their land which will provide off-site environmental benefits. Another comment states incentives need to provide incentives for all stakeholders in a watershed, not just the ones involved in traditional agricultural occupations. Seven comments indicate support of EQIP payments to livestock producers and increasing the amount of cost-share funds a participant can receive in a multi-year contract. Four comments are critical of EQIP concluding that small and family farmers and ranchers will not be able to provide funds for their portion of a multi-year contract, profitability for the family farmer is overlooked because there is no way they can possibly comply with various environmental regulations even with cost-share programs and a proposal to eliminate cost-sharing for animal waste management facilities by placing the responsibility for clean up of these problems with the State and local government. One commenter states many tribal farmers are limited resource farmers that should receive at least 75 percent cost-share and also have available low-cost conservation practice alternatives. *USDA agrees that financial incentives encourage farmers to adopt conservation practices that result in both on-and off-site benefits. The flexibility of EQIP allows for the establishment of rates that best address local situations. Special rates can be established to ensure adoption of conservation practices.*

Two comments suggest providing incentives to participants who participate in educational programs. *The Department will offer information, education, and training at no cost to farmers and ranchers to aid in implementing their conservation plan. Paragraph 1466.5(h) has been added to the final rule concerning this educational assistance.*

One comment suggests low or no-interest loans should be made instead of payments. *The 1996 Act authorizes cost-share and incentive payments, not loans, to program participants. Other programs with these options are available and information about them can be obtained at local USDA service centers. No change has been made to the final rule concerning these comments.*

Two comments encourage the use of EQIP payments with State cost-share programs if available. *The Department believes a valuable way to maximize environmental benefits per dollar expended is to encourage co-cost-share arrangements with other State and local, public and private, funding sources. The proposed rule contained several references to considering support provided by State and local programs when designating priority areas and national conservation priority areas. This encouragement also will be incorporated in the program guidance documents. No change has been made to the final rule concerning these comments.*

Two comments urge USDA to clarify in the final rule that the 25 percent cost-share simply must be a non-federal match, which could include assistance by a non-governmental organization (NGO) or a State agency. *USDA will provide administrative policy in the program guidance documents concerning situations where special interest groups or a State agency contributes to the cost of a practice. The final rule has been amended to indicate that the Federal share of cost-share payments will be reduced to the extent total financial contributions from all public and NGO sources exceed 100 percent.*

Several comments address payment rates. One comment suggests the payment rates used in prior conservation programs be re-evaluated in regard to the policies being established for EQIP. Another commenter encourages the use of a variable-rate incentive program for EQIP. Another commenter states that, to be advantageous for a participant, a realistic range of $1–4 per acre, rather than 25–50 cents per acre should be used. *The Department will estimate the local costs of conservation practices and inform producers of the maximum payments that will be allowed with EQIP. Rates used in a locale in a prior conservation program should be re-evaluated and adjusted, as needed, to reflect current conditions and needs. Variable rates may be selected for use in a given locale. No change has been made to the final rule concerning these comments.*

Forty-three comments were received which request the following practices be eligible for cost-share or incentive payments: riparian zone protection, fencing to restrict livestock from sensitive wildlife habitat areas, vegetated ditch banks, chemical free insect control, recycling, waste utilization, fire and grazing management, precision agriculture or variable technology services, system soil testing, terraces, waste oil recycling, controlled drainage, tile set backs, rinse pads, solids testing, capping abandoned wells, shelterbelts, split application of nutrients, buffer zones around ponds or lakes for citrus enterprises, on-farm containment dikes, fuel storage management, and permeable mates for tree planting, efficient irrigation practices, irrigation wheel lines, and conservation tillage including no-till. *USDA believes these are examples of some practices which may be eligible in EQIP when used for natural resource conservation purposes. To be eligible, the practice must provide beneficial, cost-effective approaches for participants to change or adapt operations to conserve or improve natural resources or to provide for environmental enhancement. Conservation practices must meet NRCS standards and specifications set forth in the FOTG. No change has been made in the final rule concerning the eligibility of conservation practices.*

One comment suggests that urbanization of agricultural land causes environmental problems that should be addressed with EQIP. *The statute does not give the Department the authority to use EQIP to address problems caused by the conversion of agricultural land to urban uses.*

One commenter favors conservation tillage and suggests grants be given to conservation districts to lease or buy equipment that could be rented to producers at a discounted rate to encourage producers to try the no-till method of farming. Another commenter favors program payments for research and development. *The 1996 Act does not authorize the Secretary to use EQIP funds for grants, nor for research and development. No change has been made to the final rule concerning these comments. However, paragraph 1466.7(a)(3) of the final rule describes how EQIP may be used to provide financial assistance where new technologies or conservation practices provide a high potential for maximizing environmental benefits per dollar expended.*

One commenter states the language in paragraph 1466.23(a)(2) concerning incentive payments ''at a rate necessary to encourage'' should take into consideration the total conservation plan and the number of natural resource concerns or practices as a total package when developing the rate structure. *The 1996 Act authorized the Secretary to make incentive payments in an amount and at a rate to be necessary to encourage a producer to perform one or more land management practices. The Department will provide guidance concerning incentive payments in program guidance documents. No change has been made to the final rule concerning this comment.*

A commenter states EQIP would be more effective if incentives were more broadly applied to farm management rather than targeting cost-share for manure structures. Another comment expresses no one hog producer should be allowed to receive more than $10,000 in cost-share. *The Department agrees incentives for management practices are effective and intends on encouraging the use of incentive payments of land management practices, which generally maximize environmental benefits per dollar expended when compared to many structural conservation practices. The Department will provide guidance concerning incentive payments in program guidance documents. Cost-share and incentive limits for conservation practices will be determined at the State or local level. No change has been made to the final rule concerning these comments.*

Four commenters state there is a need to clarify that cost-share payments are related to the installation of both structural and vegetative practices, that incentive payments are related to the development and/or maintenance of land management practices. *As the commenters suggest, cost-share payments are for establishing structural or vegetative conservation practices, and incentive payments are to encourage producers to adopt land management practices. USDA has clarified and made the distinction between cost-share and incentive payments in § 1466.3 of the final rule and has added paragraph 1466.23(a)(4) in the final rule stating that both cost-share and incentive payments may be received under the same contract.*

Two commenters state FSA county committees should also help establish the cost-share and incentive payment rates by practice within the maximum payment limitations set by law and approve contracts. *FSA State and county committees will help to establish payment rates by their participation on State technical committees or local work groups which will consult with NRCS when setting payment limits. State and county FSA offices will continue to gather supporting data for determining cost-share rates and for establishing cost-share levels with limitations.*

A recommendation by one commenter states that paragraph 1466.23(a)(3)(i) should be revised to add the words ''and the State technical committee'' after ''local work group.'' *USDA agrees with the comment and has included the revision in the final rule.*

A proposal by a commenter states that the words ''total amount'' in paragraph 1466.23(b) be deleted and the words ''Federal share'' be inserted. *The language used in the proposed rule is consistent with the 1996 Act. In its entirety, the paragraph reads ''Except as provided in paragraph (c) of this section, the total amount of cost-share and incentive payments paid to a person under this part may not exceed: * * * '' (Emphasis added.) The Department believes the phrase ''under this part'' provides the clarity being suggested by the comment and has made no change in the final rule concerning this comment.*

Two comments indicate the payment limitations are not workable and limiting a producer to $10,000 per year will delay the installation of some practices. *USDA disagrees as paragraph 1466.23(c)(3)(i) allows for the $10,000 yearly limit to be exceeded on a case-by-case basis. No change was made in the final rule concerning these comments.*

A comment states that it is unclear whether the $50,000 limitation is a total project limit per landowner or a cap on Federal participation per project. The commenter suggests that it be the cap on federal participation per project, thus encouraging participants to seek the additional funding from other non-Federal sources for the more expensive but cost effective projects, and resulting in more cost-effective projects from the Federal perspective. Three additional comments state there should be waiver provisions for those comprehensive planning efforts to exceed the $50,000 payment limitation in order that the program can realize maximization of environmental benefits. *The 1996 Act established the $50,000 limit on a multi-year contract. This limit refers to the maximum program payments that may be made on any multi-year contract, not to a cap on the total cost of a project. Contracts are commonly for one or more conservation practices to address the natural resource concerns on a farm or ranch unit of concern. The limit will have the effect of placing a cap on the program payments made on a ''project.'' However, a person may enter more than one contract, thus having the ability to receive more that $50,000 from EQIP. The proposed rule establishes a limit of one contract at any one time for each tract as identified with a FSA tract number. A participant may have subsequent EQIP contracts for different natural resource needs or concerns following completion of a previous contract on the same tract. No change was made in the final rule concerning this comment.*

Two comments favor the $50,000 contract limitation with a suggestion that there be a non-regulatory, incentive-based approach for conservation of wildlife and wildlife habitat. *The Department has developed EQIP as a voluntary natural resource conservation program that will provide financial incentives for concerns such as wildlife and wildlife habitat. No change was made in the final rule concerning these comments.*

Another comment states that $50,000 will only pay for one-third to one-half of the investment cost for a livestock animal waste facility. *The 1996 Act limits the cost-share payments for structural practices to not more than 75 percent of the projected cost of the practice. The 1996 Act does not provide a guarantee that the program payment will be 75 percent of the projected cost of the practice. No change was made in the final rule concerning this comment.*

A statement from a commenter expresses that the proposed rule does not clearly define who is eligible for EQIP funds. *The proposed rule does provide eligibility rules which will apply to define who is eligible for EQIP funds. No change was made in the final rule concerning this comment.*

Six comments concern payment limitations and how ''person'' is defined for EQIP. One comment suggests the use of social security numbers rather than allowing producers to receive payments from 3 entities. One comment recommends USDA make sure all sites owned by a single person are counted as one entity. Three of the comments state that any recipient of EQIP funds should be actively engaged in farming. One comment states that cash rent tenants should be exempt from payment limitations and one commenter states that cash rent tenants should not be exempt from payment limitations. One commenter indicates it is not surprising that the rule proposes to use the same ''loophole-laden'' payment limitation and person definitions used by FSA for commodity programs and CRP. However, the commenter expresses outrage that the rule would go beyond

those ''weak standards'' and actually delete major payment limitation provisions from applicability to EQIP. *USDA believes that it is important to have EQIP payment limitation provisions consistent with other major agricultural programs to reduce paperwork burdens on the applicant and the Department, and to reduce confusion on the part of the producer and USDA employees that different program provisions would create. The major provisions in 7 CFR Part 1400 being applied for EQIP are consistent with the regulations of the Conservation Reserve Program (CRP) and with those regulations for producers receiving production flexibility contract payments. Moreover, CCC feels that program administration will be eased by the fact that many producers are aware of these provisions, have paperwork already on file that will suffice for EQIP, and are accustomed with dealing with reporting and filing requirements. CCC has periodically revised the provisions in 7 CFR Part 1400 to close loopholes when they are discovered and will continue to do so in the future. CCC will not apply the provisions in part 1400, subpart C for determining whether persons are actively engaged in farming, subpart E for limiting payments to certain cash rent tenants, and subpart F as the provisions apply to determining whether foreign persons are eligible for payment because those provisions were developed to limit payments to persons without regard to environmental or natural resource conditions. EQIP is primarily concerned with addressing significant environmental and natural resource concerns and CCC believes the stated provisions would limit its ability to address those concerns. No change was made in the final rule concerning these comments.*

Six comments request paragraph 1466.23(c)(1) be revised to indicate that States, political subdivisions, and entities thereof, be permitted to receive payments. One comment states this paragraph excludes school land leased to farmers and state-enabled public corporations, such as drainage or irrigation districts, from receiving payment; the commenter states these entities should be eligible. Another comment states payments should be made to these entities only if they are directly and financially involved with an EQIP project established around a weed management area as defined in the guidelines for coordinated management of noxious weeds in the Greater Yellowstone area. *CCC believes that excluding States, political subdivisions, and agencies thereof, from receiving payments will make more funding available for private producers that generally do not have the financial resources that governmental entities have. Paragraph 1466.4(d)(2) of the proposed rule enables publicly owned land to be eligible if the land is under private control for the contract period and is included in the participant's operating unit; the conservation practices will contribute to an improvement in the identified natural resource concerns; and the participant has written authorization from the government landowner to apply the conservation practices. CCC believes this provision meets the intent of several of the comments. No change was made in the final rule concerning these comments.*

Three commenters express support for the language in paragraph 1466.23(c)(3)(i) which authorizes the NRCS State conservationist to exceed the $10,000 annual limitation when it is necessary to meet the conservation objectives of the participant's plan. One of the above commenters urges broad interpretation of the criteria necessary to be met in order to exceed the limitation to provide cost-effective salinity control. Two other comments state the authority to exceed the annual limitation of $10,000 should be given to the local level for their determination. Another comment states it is important that authorization of larger payments in a shorter time period should be given as an option to the State conservationist as accelerated disbursement of funds within one to two years is needed to provide the most cost-effective assistance to participants. *CCC believes that these annual payment limitation waivers are best made on a case-by-case basis by the State conservationist considering the input and recommendations received from the local level. CCC believes the language in the proposed rule provides for sufficient latitude and flexibility that waivers may be granted, when justified, that will enable payments up to the contract limits. A provision of the EQIP contract is to provide the most cost-effective conservation assistance. No change was made in the final rule. Program guidance will be developed concerning justification of the annual limitation waiver.*

Three commenters state support for the proposed rule provision for a payment limit exemption for tribal ventures, one noting that an Indian tribe may be the beneficial owner of hundreds of thousands of acres of agricultural lands held in trust status by the United States. The vast majority of tribal agricultural lands could be excluded from financial assistance programs unless tribes are exempted from funding ceilings. Another comment suggests paragraph 1466.23(c)(3)(iii) should specify that the payment limitations do not apply to contracts on tribal land or BIA allotted lands. *The Department must adhere to the EQIP payment limitation as set by statute. To accommodate the unique situation of tribal, allotted, and Indian trust lands, the regulation provides that a tribal venture can receive payments in excess of the limitations if an official of the Bureau of Indian Affairs and/or a tribal official can certify that no one person, as defined in 7 CFR Part 1400, will receive in excess of the limitations.*

One comment supports the exception to the payment limitation included in the proposed rule for a producer with a current EQIP contract who inherits land subject to another EQIP contract. *No change was made in the final rule concerning the comment.*

A recommendation by a commenter states a producer should be eligible for EQIP payments during the last 2 years of a CRP contract to allow the CRP participant to implement a conservation practice in advance of returning the CRP land to production, thereby maintaining the maximum environmental benefit achieved under the CRP contract. *The 1996 Act states that a producer shall not be eligible for cost-share payments for structural practices if the producer receives cost-share payments or other benefits for the same land under CRP or the Wetlands Reserve Program (WRP). However, there is nothing that precludes a producer from beginning the planning and paperwork process for EQIP while the land is still under CRP or WRP contract. The EQIP contract would not be approved and considered binding until such time as the land was no longer covered by either CRP or WRP contractual authority. No change was made in the final rule concerning the comment.*

Three comments recommend EQIP participants should be given the option of being paid as the practice is being implemented, with as much as one-half of the payment being made following the technical certification that the project has been completed. *The program guidance documents will detail procedures for making partial payments to participants. Partial payments for completion of part of a conservation practice may be made if the participant will complete the entire practice, with or without EQIP assistance, within the time prescribed by the FSA county committee, with NRCS concurrence. No change was made in the final rule concerning these comments.*

One hundred and four comments express that paragraph 1466.23(e) needs to be changed to provide payments as soon as the conservation practice is complete and technically certified. Two of the commenters ask whether the deferred payment is referring to the calendar year or the fiscal year. *Paragraph 1466.23(e) of the proposed rule indicates that payments will not be made until the fiscal year following the fiscal year in which the contract was entered into. For illustration purposes, a contract entered into from October 1, 1996 through September 30, 1997 cannot have payments made on completed practices until after October 1, 1997, the beginning of the next fiscal year. Except for payments earned during the first fiscal year of the contract, all other payments will be made after the practice is certified to be in accordance with technical specifications. This provision is based on the 1996 Act and the Department cannot change this provision, thus no change was made in the final rule concerning these comments.*

Section 1466.24 Contract Modifications and Transfers of Land

Four comments concern contract modifications. One comment states this section must provide provisions for reasonable modification of contracts. A second comment indicates concern that a producer will not have enough flexibility in a long-term contract in order to be permitted to modify a contract several years into its implementation. Another comment proposes the local NRCS district conservationist should be allowed to modify the contract if a planned practice is not practical. One comment suggests the local work group should be able to approve or deny contract modifications, in accordance with NRCS requirements, because requiring CCC approval of every modification may result in unnecessary administrative delays. *The contract modification provisions for EQIP are similar to those in other USDA conservation programs, including the former programs which EQIP replaces. The program guidance documents will provide procedural guidance for modifying contracts, and will have the flexibility that will enable a participant to apply to modify a contract several years into its implementation as long as the conservation plan is revised in accordance with NRCS requirements and approved by the conservation district. Local work groups are advisory bodies and cannot approve/disapprove contracts or contract modifications. Approval/disapproval of contract modifications will be done in the same manner as contracts; FSA and NRCS will serve as representatives of CCC at the local level. It is not anticipated that requests for contract modifications will result in unnecessary delays. No change was made in the final rule concerning these comments.*

One comment states paragraph 1466.24(c) should have the words ''loses control of the land'' removed. The commenter believes that if a producer loses control through bankruptcy, it would be unfair to require repayment of cost-share funds. *CCC disagrees with the comment. If a participant loses control of the land, through bankruptcy or other manner, and cannot complete the contract, the environmental benefits that had been expected using program assistance may not be achieved. No change was made in the final rule concerning this comment.*

Section 1466.25 Contract Violations and Termination

Five comments suggest the local conservation district should be involved in the consultation process referred to in § 1466.25. *CCC agrees with this suggestion because of the role conservation districts have on the local work group and in approving conservation plans used as the basis for program contracts. The final rule has been amended to enable NRCS to consult with the local conservation district.*

Three comments concern the time a participant should be given if they are found to be violating the terms of the contract. One comment recommends that ''reasonable time'', used in paragraph 1466.25(a)(1), should be defined in § 1466.3 Definitions. Another comment recommends all violations be corrected as soon as possible with a maximum of one year to get back into compliance with the terms of the EQIP contract. Another comment suggests a waiver process be provided for those participants who cannot meet the time requirements of an EQIP plan. *CCC does not agree that the term ''reasonable time'' needs to be defined in regulation, nor that a maximum of one year should be regulated. Establishing a specific amount of time does not permit flexibility for the implementation of locally guided conservation measures. Depending on the circumstances of the situation, a reasonable time in one instance may be unreasonable in another instance. The FSA county committee, in consultation with NRCS and the local conservation district, are in the best position to determine what is reasonable. The program guidance documents being developed will indicate that, generally, a participant should be given one year, or some other reasonable time, to correct the violation and comply with the terms of the contract. No change was made in the final rule concerning these comments.*

One comment suggests language should be added to protect producers from being considered to be in noncompliance if problems are discovered during a technical assistance visit by NRCS, similar to provisions relating to highly erodible land compliance. *CCC does not agree with this suggestion since EQIP is entirely a voluntary program. Program participants voluntarily request program assistance to implement conservation practices according to a conservation plan and schedule that the producer develops. CCC believes that § 1466.25 of the proposed rule provides sufficient flexibility to enable a participant who is found to be in violation of a contract to again comply with the contract and to achieve the expected environmental benefits. No change was made in the final rule concerning this comment.*

Several comments concern specific, hypothetical examples of potential violations of contracts. One comment asks if soil, water or other natural resources are not protected in a cost-effective manner, will the participant be subject to breach of contract. Another example relates to a participant who appeals a determination that the goals and objectives were not achieved, will payments be withheld pending a review of the appeal. *All applicants are required to submit a conservation plan that is acceptable to NRCS and approved by the conservation district. NRCS will likely find the plan unacceptable if it is not cost-effective or does not achieve the goal and objectives. Therefore, the applicant will need to revise the plan to make it acceptable. Once a plan is acceptable and a participant has a contract, the participant will be in compliance with the contract as long as the conservation practices are being established, operated, and maintained in accordance with the contract. No change was made in the final rule concerning these comments.*

One comment states the penalties and/or repayment obligations for a participant who is in violation of a contract should be included in the rule. Another comment states violators of compliance ''must'' be penalized, not ''may'' be as the proposed rule states, otherwise EQIP will lose its credibility and effectiveness. A third comment states the penalties for noncompliance should be proportional to the degree of violation. *CCC believes the proposed*

rule language in paragraphs 1466.25(b)(1) and (2) satisfactorily provides for the assessment of repayment obligations and liquidated damages, and provides for flexibility in determining the amount of repayment or liquidated damages, considering the degree of the violation. No change was made in the final rule concerning these comments.

Four comments concern good faith and hardship considerations. One comment states no penalty should be assessed for conservation practices already completed in a contract if a good faith effort can be determined. Two other comments express an opposite point of view and request the good faith and hardship clause should be eliminated. These commenters suggest if an applicant is unable to carry out a conservation plan, that should be determined before a contract is commenced and participation in EQIP should be denied. One comment states that hardship criteria should be provided in this section. *USDA has knowledge and experience from administering other conservation programs that there are many factors which can alter a participant's ability to implement a long-term contract that are not known at the time of application. Factors such as natural disasters, economic hardship, or a producer's ill-health, all of which may be beyond the participant's control, may necessitate the need to determine good faith efforts in order to make appropriate contract adjustments. The criteria for determining hardship and its applicability will be provided in the program guidance documents. Paragraph 1466.25(b)(3) provides sufficient latitude in regard to determining good faith effort for all contract decisions. No change was made in the final rule concerning these comments.*

One comment states there should be an ''escape clause'' for a participant to withdraw from a contract for reasons beyond their control. *CCC feels that the language in paragraph 1466.25(b)(4) of the proposed rule is adequate to enable a participant to voluntarily terminate a contract if CCC agrees. No change was made in the final rule concerning this comment.*

Section 1466.32 Access to Operating Unit

A commenter asks if NRCS will need access to the farm to obtain the necessary resources inventory information or will the property owner be permitted to bring that information to the NRCS office. The commenter has the impression NRCS will collect data for the whole farm and is opposed to this approach. *The final rule provides that a participant shall develop and submit a conservation plan for the farm or ranch unit of concern. An inventory of natural resource conditions is a component of the conservation plan. The participant may use technical assistance from NRCS or other government or private agribusiness sector qualified professionals to develop the conservation plan. If NRCS provides the technical assistance, it will inventory the natural resources only to the extent it is needed to determine the natural resource concerns and their causes for the farm or ranch unit of concern. If the producer requests a whole farm or ranch assessment, NRCS will collect the resource inventory information for the entire farm or ranch. NRCS may need to have access to the farm or ranch to determine the acceptability of the conservation plan submitted by a participant. The final rule clarifies in paragraph 1466.21(b)(3)(iv) that, in addition to access, the producer is required to supply information needed to determine compliance with the program.*

One comment asks who will be considered an authorized CCC representative for the purposes of having access to an operating unit or tract. *NRCS, FSA, and the FSA county committee will serve as the authorized representatives of CCC at the local level for the purposes of this section. No change was made in the final rule concerning this comment.*

Two comments concern the notification of the participant prior to gaining access to a farm or ranch. One comment states there is no reason for an inspection without the participant first being notified, therefore the language ''make a reasonable effort'' should be removed. Another comment suggests new language for this section, stating ''a participant must be notified 30 days prior to inspection is mandatory by CCC.'' *CCC believes there are numerous cases where a participant may be absent from the property for a lengthy period of time, or the participant is an absentee landowner or tenant who may not be easily contacted. In order to conduct its business in a timely manner in these cases, USDA believes that CCC should make a reasonable effort to contact the participant prior to accessing the property to enable the participant to attend at the same time. The program guidance documents will stipulate that the CCC representatives must document in the participant's file the efforts made to notify the participant before accessing the operating unit. It will be suggested in the guidance that the CCC representative begin efforts to contact the participant no later than 15 days before making the planned visit. No change was made in the final rule concerning these comments.*

List of Subjects in 7 CFR Part 1466

Administrative practices and procedures, Conservation, Natural resources, Water resources, Wetlands, Payment rates.

Accordingly, Title 7 of the Code of Federal Regulations is amended by adding a new part 1466 to read as follows:

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Subpart A—General Provisions

Sec.
1466.1 Applicability.
1466.2 Administration.
1466.3 Definitions.
1466.4 Program requirements.
1466.5 Priority areas and significant statewide natural resource concerns.
1466.6 Conservation plan.
1466.7 Conservation practices.
1466.8 Technical and other assistance provided by qualified personnel not affiliated with USDA.

Subpart B—Contracts

1466.20 Application for contracts and selecting offers from producers.
1466.21 Contract requirements.
1466.22 Conservation practice operation and maintenance.
1466.23 Cost-share and incentive payments.
1466.24 Contract modifications and transfers of land.
1466.25 Contract violations and termination.

Subpart C—General Administration

1466.30 Appeals.
1466.31 Compliance with regulatory measures.
1466.32 Access to operating unit.
1466.33 Performance based upon advice or action of representatives of CCC.
1466.34 Offsets and assignments.
1466.35 Misrepresentation and scheme or device.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839aa–3839aa–8.

Subpart A—General Provisions

§ 1466.1 Applicability.

Through the Environmental Quality Incentives Program (EQIP), the Commodity Credit Corporation (CCC) provides technical, educational, and financial assistance to eligible farmers and ranchers to address soil, water, and related natural resources concerns, and to encourage environmental enhancements, on their lands in an environmentally beneficial and cost-effective manner. The purposes of the program are achieved through the implementation of structural, vegetative,

and land management practices on eligible land.

§ 1466.2 Administration.

(a) Administration of EQIP is shared by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) as set forth below.

(b) NRCS shall:

(1) Provide overall program management and implementation leadership for EQIP;

(2) Establish policies, procedures, priorities, and guidance for program implementation, including determination of priority areas;

(3) Establish cost-share and incentive payment limits;

(4) Determine eligibility of practices;

(5) Provide technical leadership for conservation planning and implementation, quality assurance, and evaluation of program performance; and

(6) Make funding decisions and determine allocations of program funds.

(c) FSA shall:

(1) Be responsible for the administrative processes and procedures for applications, contracting, and financial matters, including allocation and program accounting; and

(2) Provide leadership for establishing, implementing, and overseeing administrative processes for applications, contracts, payment processes, and administrative and financial performance reporting.

(d) NRCS and FSA shall concur in establishing policies, priorities, and guidelines related to the implementation of this part.

(e) No delegation herein to lower organizational levels shall preclude the Chief of NRCS, or the Administrator of FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made under this part that is the responsibility of their respective agencies.

(f) CCC may enter into cooperative agreements with other Federal or State agencies, Indian tribes, conservation districts, units of local government, and public and private not for profit organizations to assist CCC with implementation of this part.

§ 1466.3 Definitions.

The following definitions shall apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Administrator means the Administrator of the FSA, United States Department of Agriculture (USDA), or designee.

Agricultural land means cropland, rangeland, pasture, forest land, and other land on which crops or livestock are produced.

Animal unit means 1,000 pounds of live weight of any given livestock species or any combination of livestock species.

Animal waste management facility means a structural practice used for the storage or treatment of animal waste.

Applicant means a producer who has requested in writing to participate in EQIP. Producers who are members of a joint operation shall be considered one applicant.

Chief means the Chief of NRCS, USDA, or designee.

Confined livestock operation means a livestock facility that stables, confines, feeds, or maintains animals for a total of 45 days or more in any 12-month period and does not sustain crops, vegetation, forage growth, or post-harvest residues within the confined area in the normal growing season over any portion of the confinement facility.

Conservation district means a political subdivision of a State, Indian tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation management system (CMS) means any combination of conservation practices and management practices that, if applied, will protect or improve the soil, water, or related natural resources. A CMS may treat one or all of the natural resources to the sustainable level, or to a greater or lesser extent than the sustainable level.

Conservation plan means a record of a participant's decisions, and supporting information, for treatment of a unit of land or water, and includes the schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems.

Conservation practice means a specified treatment, such as a structural or vegetative practice or a land management practice, which is planned and applied according to NRCS standards and specifications as a part of a CMS.

Contract means a legal document that specifies the rights and obligations of any person who has been accepted for participation in the program.

Cost-share payment means the monetary or financial assistance from CCC to the participant to share the cost of installing a structural or vegetative practice.

County executive director means the FSA employee responsible for directing and managing program and administrative operations in one or more FSA county offices.

Designated conservationist means a NRCS employee whom the State conservationist has designated as responsible for administration of EQIP. In the case of a priority area or other area that crosses State borders, the Chief or the Chief's designee will designate the NRCS official responsible for administration of EQIP in the priority area.

Farm Service Agency county committee means a committee elected by the agricultural producers in the county or area, in accordance with Section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, or designee.

Farm Service Agency State committee means a committee in a State or the Caribbean Area (Puerto Rico and the Virgin Islands) appointed by the Secretary in accordance with Section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended.

Field office technical guide means the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Incentive payment means the monetary or financial assistance from CCC to the participant in an amount and at a rate determined appropriate to encourage the participant to perform a land management practice that would not otherwise be initiated without program assistance.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian trust lands means real property in which:

(1) The United States holds title as trustee for a Indian or tribal beneficiary, or

(2) A Indian or tribal beneficiary holds title and the United States maintains a trust relationship.

Land management practice means conservation practices that primarily require site-specific management techniques and methods to conserve,

protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to, nutrient management, manure management, integrated pest management, integrated crop management, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

Life span means the period of time specified in the contract or conservation plan during which the conservation management systems or component conservation practices are to be maintained and used for the intended purpose.

Liquidated damages means a sum of money stipulated in the contract which the participant agrees to pay if the participant breaches the contract. The sum represents an estimate of the anticipated or actual harm caused by the breach, and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

Livestock means animals produced for food or fiber such as dairy cattle, beef cattle, poultry, turkeys, swine, sheep, horses, fish and other animals raised by aquaculture, or animals the State conservationist identifies in consultation with the State technical committee.

Livestock production means farm and ranch operations involving the production, growing, raising, breeding, and reproduction of livestock or livestock product.

Livestock-related natural resource concern means any environmental condition, either on-site or off-site, that is directly related to livestock activity or to livestock manure or waste.

Local work group means representatives of FSA, the Cooperative State Research, Education, and Extension Service (CSREES), the conservation district, and other Federal, State, and local government agencies, including Tribes and Resource Conservation and Development councils, with expertise in natural resources who consult with NRCS on decisions related to EQIP implementation.

National conservation priority area means a watershed, multi-state area, or region of specific environmental sensitivity designated by the Chief.

Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Participant means an applicant who is a party to an EQIP contract.

Priority area means a watershed, area, or region that is designated under this part because of specific environmental sensitivities or significant soil, water, or related natural resource concerns.

Private agribusiness sector means agricultural producers, certified crop advisors, professional crop consultants that are certified or certified and independent, agricultural cooperatives, integrated pest management coordinators and scouts, agricultural input retail dealers, and other technical consultants.

Producer means a person who is engaged in livestock or agricultural production.

Regional conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a NRCS region.

Related natural resources means those natural resources that are associated with soil and water, including air, plants, and animals, and the land or water on which they may occur, including grazing land, wetland, forest land, and wildlife habitat.

Resource management system means a conservation management system that, when implemented, achieves sustainable use of the soil, water, and related natural resources.

Secretary means the Secretary of the United States Department of Agriculture.

State conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State executive director means the FSA employee authorized to direct and supervise FSA activities in a State or the Caribbean Area (Puerto Rico and the Virgin Islands).

State technical committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Structural practice means a conservation practice which primarily involves the establishment, construction, or installation of a site-specific measure to conserve, protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, animal waste management facilities, terraces, grassed waterways, tailwater pits, livestock water developments, and capping of abandoned wells.

Technical assistance means the personnel and support resources needed to conduct conservation planning; conservation practice survey, layout, design, installation, and certification; training, certification, and provide quality assurance for professional conservationists; and evaluation and assessment of the program.

Unit of concern means a parcel of agricultural land that has natural resource conditions that are of concern to the participant.

Vegetative practice means a conservation practice which primarily involves the establishment or planting of a site-specific vegetative measure to conserve, protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, contour grass strips, filterstrips, critical area plantings, tree planting, and permanent wildlife habitat.

§ 1466.4 Program requirements.

(a) Program participation is voluntary. The participant, in cooperation with the local conservation district, develops a conservation plan for the farm or ranching unit of concern. The participant's conservation plan serves as the basis for the EQIP contract. CCC provides cost-share or incentive payments to apply needed conservation practices and land use adjustments within a time schedule specified by the conservation plan.

(b) The Chief determines the funds available to NRCS for technical assistance according to the purpose and projected cost for which the technical assistance is provided by NRCS or designee in a fiscal year. The Chief allocates an amount according to the type of expertise required, the quantity of time involved, the timeliness required, the technology needed, and other factors as determined appropriate by the Chief. Funding shall not exceed the projected cost to NRCS of the technical assistance provided in a fiscal year.

(c) To be eligible to participate in EQIP, an applicant must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions found at part 12 of this title;

(2) Have control of the land for the life of the proposed contract period.

(i) An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the

Chief determines that there is sufficient assurance of control;

(ii) If the applicant is a tenant of the land involved in agricultural production the applicant shall provide CCC with the written concurrence of the landowner in order to apply a structural or vegetative practice.

(3) Submit a conservation plan that is acceptable to NRCS, is approved by the conservation district, and is in compliance with the terms and conditions of the program;

(4) Comply with the provisions at § 1412.304 of this chapter for protecting the interests of tenants and sharecroppers, including provisions for sharing, on a fair and equitable basis, payments made available under this part, as may be applicable; and

(5) Supply information as required by CCC to determine eligibility for the program.

(d) Land used as cropland, rangeland, pasture, forest land, and other land on which crops or livestock are produced, including agricultural land that NRCS determines poses a serious threat to soil, water, or related natural resources by reason of the soil types; terrain; climate; soil, topographic, flood, or saline characteristics; or other factors or natural hazards, including the existing agricultural management practices of the applicant, may be eligible for enrollment in EQIP. Additionally, land may only be considered for enrollment in EQIP if NRCS determines that the land is:

(1) Privately owned land;

(2) Publicly owned land where:

(i) The land is under private control for the contract period and is included in the participant's operating unit;

(ii) Conservation practices will contribute to an improvement in the identified natural resource concern; and

(iii) The participant has provided CCC with written authorization from the government landowner to apply the conservation practices; or

(3) Tribal, allotted, or Indian trust land.

(e) Fifty percent of available EQIP funds will be targeted to livestock-related natural resource concerns, including concerns on grazing lands and other lands directly attributable to livestock, measured at the national level.

§ 1466.5 Priority areas and significant statewide natural resource concerns.

(a)(1) Consistent with maximizing the overall environmental benefits per dollar expended by the program, NRCS may:

(i) Designate a watershed, an area, or a region of special environmental sensitivity or having significant soil, water, or related natural resource concern as a priority area and give special consideration to applicants who have conservation plans that address the natural resource concern(s) for which the priority area was designated;

(ii) Designate national conservation priority areas where the nature or scope of a natural resource concern necessitates greater coordination of efforts across boundaries; and

(iii) Identify significant statewide natural resource concerns outside a priority area.

(2) In addition to other factors identified in this section, priority areas, national conservation priority areas, and significant statewide natural resource concerns shall emphasize off-site benefits to the environment and coordination with other Federal and non-Federal conservation programs, including the Conservation Reserve Program and the Wetlands Reserve Program.

(b) CCC may approve technical, educational, and financial assistance under this part to participants with significant statewide natural resource concerns outside a priority area.

(c) To be considered for approval of a priority area, a Federal, State, or local government agency, Indian tribe, or a private group or entity shall work cooperatively with a respective local work group and State technical committee in identifying potential priority areas. The local work group shall obtain input from private individuals, groups, and organizations when considering and identifying potential priority areas. Proposals developed at the local level shall be reviewed by the State technical committee which makes a recommendation to the NRCS State conservationist. The priority area proposal shall include:

(1) A description, quantified when and where possible, of the nature and extent of natural resource concerns in the proposed area;

(2) A description, quantified when and where possible, of how the proposed goals, objectives, and solutions for the natural resource problems would maximize the environmental benefits that would be delivered with the requested Federal dollars, both within the priority area and as part of the overall program provided under this part;

(3) Background information such as science-based data on environmental status and needs, soils information, demographic information, and other available technical data that illustrate the nature and extent of natural resource concerns in the priority area or the appropriateness of the proposed solution to those natural resource concerns.

(4) The existing human resources, incentive programs, education programs, and on-farm research programs available at the Federal, State, Indian tribe, and local levels, both public and private, to assist with the areawide activities;

(5) The technical, educational, and financial assistance needed from EQIP to help meet the areawide goals and objectives;

(6) Ways and means to measure performance and success, quantified when and where possible, and plans to use existing or obtain additional science-based information; and

(7) An explanation, quantified when and where possible, of the degree of difficulty producers face in complying with environmental laws.

(d) The NRCS State conservationist, in consultation with the State technical committee and based on recommendations of local work groups, will approve the designation of a priority areas and make funding recommendations to the Chief. NRCS will evaluate proposals for priority area designations according to natural resource and environmental factors as identified in paragraph (d)(1) of this section, the economic significance of the factors, the incorporation of conservation practices that best address the factors, and the ability to obtain multiple conservation benefits relative to the significance of these natural resource factors.

(1) NRCS shall consider the following factors in determining the significance of the natural resource concern(s) identified in the proposal:

(i) Soil types and characteristics;

(ii) Terrain and topographic features;

(iii) Climatic conditions;

(iv) Flood hazards;

(v) Saline characteristics of land or water;

(vi) Environmental sensitivity of the land, such as wetlands and riparian areas;

(vii) Quality and intended use of the land;

(viii) Quality and intended use of the receiving waters, including fishery habitat and source of drinking water supply;

(ix) Wildlife and wildlife habitat quality and quantity;

(x) Quality of the air; or

(xi) Other natural hazards or other factors, including the existing agricultural management practices of the producers in the area or pest problems which may threaten natural resources.

(2) NRCS will consider the following factors in its allocation of funds:

(i) Condition of the natural resources;

(ii) Significance of the natural resource concern;

(iii) Improvements that NRCS expects will result from implementation of the conservation plan;

(iv) Expected number of producers who will participate and the time and financial commitment that the producers will provide;

(v) Estimated program cost to provide technical, educational, and financial assistance;

(vi) Level of coordination with and support from existing Federal, State, tribal, and local programs, including private sources, and both direct and in-kind contributions;

(vii) Ways the program can best assist producers in complying with Federal, State, and tribal environmental laws, quantified where possible; and

(viii) Other factors the NRCS determines will result in maximization of environmental benefits per dollar expended.

(e) A NRCS State conservationist, in consultation with a State technical committee and based on recommendations of a local work group, may approve program assistance to participants with significant statewide natural resource concerns outside a funded priority area.

(f)(1) The Chief may designate national conservation priority areas using the identified national program objectives and criteria. The Chief may receive nominations from Federal, State, or local government agencies, Indian tribes, or private groups or entities, and may consult with other Federal agencies in selecting national conservation priority areas. Consistent with maximizing the overall environmental benefits per dollar expended by the program, the Chief may designate national conservation priority areas under this part to provide technical assistance, cost-share payments, incentive payments, and education for producers to comply with nonpoint source pollution requirements, other Federal, State, tribal or local environmental laws, or to meet other conservation needs.

(2) NRCS will consider the following factors in deciding whether to designate a national conservation priority area in which program assistance will be provided:

(i) Condition of the natural resources;

(ii) Significance of the natural resource concern;

(iii) Improvements that NRCS expects will result from implementation of the conservation plan;

(iv) Expected number of producers who will participate and the time and financial commitment that the producers will provide;

(v) Estimated program cost to provide technical, educational, and financial assistance;

(vi) Level of coordination with and support from existing State and local programs, including private sources, and both direct and in-kind contributions;

(vii) Ways the program can best assist producers in complying with Federal, State, and tribal environmental laws, quantified where possible; and

(viii) Other factors that will assist CCC in maximizing the overall environmental benefit per dollar expended under this part.

(g) NRCS will establish program outreach activities at the national, State, and local levels in order to ensure that producers whose land has environmental problems and natural resource concerns are aware, informed, and know that they may be eligible to apply for program assistance. Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to limited resource producers, small-scale producers, Indian tribes, Alaska natives, and Pacific Islanders.

(h) NRCS State conservationists shall develop an education plan that describes the educational assistance that will be provided to enhance program participant's knowledge about conservation opportunities, will aid in implementing their conservation plan, and enhance environmental benefits that will be realized through implementation of the program. In the development of the education plan, NRCS will design a coordinated approach, including national, State, and local components depending on the similar or unique education needs identified. NRCS will encourage cooperation among education providers, such as the Extension system, conservation districts, State agencies, and other public and private education providers, as well as the use of existing educational resources, material, or programs that deal with natural resource related issues.

(i) The Chief, with FSA concurrence, will make funding decisions for national conservation priority areas, State-approved priority areas, and significant statewide natural resource concerns outside a funded priority area.

(1) After review of funding requests, the Chief may base funding decisions on an allocation process which considers:

(i) The significance of the environmental and natural resources conditions;

(ii) Factors used and considered in accordance with paragraphs (d) and (f) of this section;

(iii) The need to maximize environmental benefits per dollar expended;

(iv) The capability of the partners involved in the proposal to provide flexible technical, educational, and financial assistance;

(v) The conservation needs of farmers and ranchers in complying with the highly erodible land and wetland conservation provisions of part 12 of this title and Federal, State, and tribal environmental laws;

(vi) The opportunity for encouraging environmental enhancement;

(vii) The anticipated or proven performance of the partners involved in the proposal in delivering the program; and

(viii) Other relevant information to meet the purposes of the program as found in this part.

(2) In evaluating the considerations described in paragraph (i)(1) of this section, the Chief may consult other Federal agencies with the appropriate expertise and information.

(3) The approval of a priority area at the State level does not necessarily mean that funds will be allocated to that area. Funding may be allocated to a priority area for one or more years. Proposals that are not funded may be resubmitted to the Chief for subsequent review and consideration to determine if the resubmitted proposal meets Federal priorities for funding.

§ 1466.6 Conservation plan.

(a) The participant shall develop and submit a conservation plan for the farm or ranch unit of concern that, when implemented, protects the soil, water, or related natural resources in a manner that meets the purpose of the program, is acceptable to NRCS, and is approved by the conservation district. This plan forms the basis for an EQIP contract.

(1) When considering the acceptability of the plan, NRCS will consider whether the participant will use the most cost-effective conservation practices to solve the natural resource concerns and maximize environmental benefits per dollar expended.

(2) As determined by NRCS, the conservation plan must allow the participant to achieve a cost-effective resource management system, or some appropriate portion of that system, identified in the applicable NRCS field office technical guide, for the priority natural resource condition of concern in

the priority area or the significant statewide natural resource concern outside a funded priority area.

(b) Upon a participant's request, the NRCS may provide technical assistance to a participant. NRCS may utilize the services of qualified personnel of cooperating Federal, State, or local agencies, Indian tribes, or private agribusiness sector or organizations, in performing its responsibilities for technical assistance. Participants may use the services of qualified non-NRCS professionals to provide technical assistance. NRCS retains approval authority over the technical adequacy of work done by non-NRCS personnel for the purpose of determining EQIP contract compliance.

(c) Participants are responsible for implementing the conservation plan. A participant may seek additional assistance from other public or private organizations or private agribusiness sector as long as the activities funded are in compliance with this part.

(d) All conservation practices scheduled in the conservation plan are to be carried out in accordance with the applicable NRCS field office technical guide.

(e) The conservation plan, or supporting documentation, for the farm or ranch unit of concern shall include:

(1) A description of the prevailing farm or ranch enterprises and operations that may be relevant to conserving and enhancing soil, water, or related natural resources;

(2) A description of relevant natural resources, including soil types and characteristics, rangeland types and conditions, proximity to water bodies, wildlife habitat, or other relevant characteristics related to the conservation and environmental objectives of the plan;

(3) A description of the participant's specific conservation and environmental objectives to be achieved;

(4) To the extent practicable, the quantitative or qualitative goals for achieving the participant's conservation and environmental objectives;

(5) A description of one or more conservation practices in the conservation management system to be implemented to achieve the conservation and environmental objectives;

(6) A description of the schedule for implementing the conservation practices, including timing and sequence; and

(7) Information that will enable evaluation of the effectiveness of the plan in achieving the conservation and environmental objectives.

(f) To simplify the conservation planning process for the participant, the conservation plan may be developed, at the request of the participant, as a single plan that incorporates, to the extent possible, any or all other Federal, State, tribal, or local government program or regulatory requirements. Participants do not need to replace existing plans developed by natural resource professionals if such plans meet the resource management objectives under this part. NRCS may accept an existing conservation plan developed and required for participation in any other USDA program if the conservation plan otherwise meets the requirements of this part. When a participant develops a single conservation plan for more than one program, the participant shall clearly identify the portions of the plan that are applicable to the EQIP contract. It is the responsibility of the participant to ascertain and comply with any and all applicable program or regulatory requirements, and the NRCS development or approval of a conservation plan shall not be deemed to constitute compliance with program or regulatory requirements administered or enforced by another agency.

§ 1466.7 Conservation practices.

(a)(1) The NRCS, with FSA consultation, shall provide guidance for determining structural, vegetative, and land management practices eligible for program payments. To be considered as an eligible conservation practice, the practices must provide beneficial, cost-effective approaches for participants to change or adapt operations to conserve or improve soil, water, or related natural resources or to provide for environmental enhancement.

(2) The designated conservationist, in consultation with the State technical committee or local work group, shall determine the conservation practices eligible for program payments for the priority area or for significant statewide natural resource concerns outside a priority area.

(3) Where new technologies or conservation practices that provide a high potential for maximizing the environmental benefits per dollar expended have been developed, NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy, and effectiveness of the technology or conservation practices at maximizing environmental benefits per dollars expended. NRCS may involve other entities in the pilot testing, including conservation districts, extension and research agencies and institutions, private agribusiness sector, and others.

(b)(1) CCC cannot provide cost-share assistance to construct an animal waste management facility on a large confined livestock operation. CCC may fund other structural, vegetative, or land management practices needed in the conservation management system to address the livestock-related natural resource concerns on a large confined livestock operation. Except as provided by paragraph (b)(2) of this section, CCC will consider a producer with confined livestock operations of more than 1,000 animal unit equivalents to be a large confined livestock operation and ineligible for financial assistance for construction of an animal waste management facility. When determining the number of livestock in the participant's operation for eligibility purposes, the total number of animals confined at all locations of the participant's livestock operation will be used.

(2) The NRCS State conservationist may develop a definition for a large confined livestock operation as it applies to that particular State using criteria recommended by the State technical committee. The criteria will consider but not be limited to such factors as:

(i) The cost-effectiveness of the facility and its potential to maximize environmental benefits per dollar expended;

(ii) The ability of the producer to pay for the cost of animal waste management facilities;

(iii) The significance of the natural resource concern resulting from the operation;

(iv) The prevailing State, Tribe, or local implementation of various Federal, Tribal, and State environmental laws and regulations, including regulations promulgated pursuant to the Clean Water Act (33 U.S.C. 1251 *et seq.*) and guidance developed under § 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. 1455b);

(v) The particular characteristics of modern livestock operations; and

(vi) The size of the operation in relation to other confined livestock operations in the State or region.

(3) The NRCS State conservationist, in consultation with the State technical committee, shall place emphasis on the considerations contained in paragraphs (b)(2)(i) and (b)(2)(ii) of this section when developing the criteria to define a large confined livestock operation.

(4) The definitions developed by NRCS State conservationists must be approved by the Chief, who will also provide oversight on their

implementation. In approving the definitions the Chief will consider:

(i) The justification for the definition; and

(ii) The need for consistency in the definitions used between and among States, to the greatest extent possible.

(5) The Chief will report semiannually to the Secretary during the first two years of the program on the implementation of paragraph (b) of this section, including the impact that may have occurred to the environment and to the structure of livestock agriculture.

§ 1466.8 Technical and other assistance provided by qualified personnel not affiliated with USDA.

(a) A NRCS State conservationist may utilize technical and other assistance from qualified personnel of other Federal, State, and local agencies, or Indian tribes, and will encourage producers to use the most cost-effective technical assistance available, including if appropriate, using the services of the private agribusiness sector to carry out the assigned responsibilities of the program.

(b) Technical and other assistance provided by qualified personnel not affiliated with USDA may include, but is not limited to: conservation planning; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and training, certification, and quality assurance for professional conservationists.

(c) NRCS shall provide technical coordination and leadership for the program, regardless of who provides technical and other assistance, and shall assure that the quality of the assistance obtained from other Federal, State, and local agencies, Indian tribes, and the private agribusiness sector is acceptable for purposes of this part. Non-NRCS assistance shall not be deemed to satisfy an EQIP contract entered into under subpart B of this part until the assistance has been approved by NRCS.

Subpart B—Contracts

§ 1466.20 Application for contracts and selecting offers from producers.

(a) Any producer who has eligible land may submit an application for participation in the EQIP to a USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation.

(b) CCC will accept applications throughout the year. NRCS shall rank and select the offers of applicants periodically, as determined appropriate by NRCS after consultation with the State technical committee and on the recommendation of the local work groups.

(c) The designated conservationist, in consultation with the local work group, will develop ranking criteria to prioritize applications within a priority area. NRCS shall prioritize applications from the same EQIP-funded priority area using the criteria specific to the area. The FSA county committee, with the assistance of the designated conservationist and the FSA county executive director, shall approve for funding the applications in a priority area based on eligibility factors of the applicant and the NRCS ranking.

(d) The NRCS State conservationist, in consultation with the State technical committee, and using quality criteria in the NRCS field office technical guide, will develop criteria to prioritize applications from applicants with significant statewide natural resource concerns outside a priority area. The FSA county committee, with assistance of the designated conservationist and FSA county executive director, shall approve for funding these applications based on the eligibility factors of the applicant and the NRCS ranking.

(e) The designated conservationist will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria. A participant has the option of offering and accepting less than the maximum program payments allowed.

(f) NRCS will rank all applications using criteria that will consider:

(1) The environmental benefits per dollar expended;

(2) A reasonable estimate of the cost of the conservation practices, the program payments that will be paid to the applicant, and other factors for determining which applications will present the least cost to the program;

(3) The environmental benefits that will be derived by applying the conservation practices in the conservation plan which will meet the purposes of the program;

(4) The extent to which the contract will assist the applicant in complying with Federal, State, tribal, or local environmental laws;

(5) Whether the land in the application is located in a priority area and the extent to which the contract will assist the priority area goals and objectives.

(g) If two or more applications have an equal rank, the application that will result in the least cost to the program will be given greater consideration.

§ 1466.21 Contract requirements.

(a) In order for a participant to receive cost-share or incentive payments, the participant shall enter into a contract agreeing to implement a conservation plan or portions thereof. FSA shall determine the eligibility of participants. The FSA county committee, with NRCS concurrence, shall use the NRCS ranking consistent with the provisions of § 1466.20 and grant final approval of a contract.

(b) An EQIP contract shall:

(1) Incorporate by reference all portions of a conservation plan applicable to EQIP;

(2) Be for a duration of not less than 5 years nor more than 10 years;

(3) Incorporate all provisions as required by law or statute, including participant requirements to:

(i) Not conduct any practices on the farm or ranch unit of concern that would tend to defeat the purposes of the contract;

(ii) Refund any program payments received with interest, and forfeit any future payments under the program, on the violation of a term or condition of the contract, consistent with the provisions of § 1466.25;

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, consistent with the provisions of § 1466.24; and

(iv) Supply information as required by CCC to determine compliance with the contract and requirements of the program.

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices consistent with the provisions of § 1466.22; and

(5) Any other provision determined necessary or appropriate by CCC.

(c) The participant must apply a financially assisted practice within the first 12 months of signing a contract.

(d) There is a limit of one EQIP contract at any one time for each tract of agricultural land, as identified with a FSA tract number, determined at the time of the application for EQIP assistance. Subject to the payment limitation set out elsewhere in this part, a participant may have subsequent EQIP contracts for different natural resource needs or concerns following completion of a previous EQIP contract on the same tract.

§ 1466.22 Conservation practice operation and maintenance.

The contract shall incorporate the operation and maintenance of conservation practices applied under the contract. The participant shall operate and maintain the conservation

practice for its intended purpose for the life span of the conservation practice, as identified in the contract or conservation plan, as determined by CCC. Conservation practices installed before the execution of a contract, but needed in the contract to obtain the environmental benefits agreed upon, are to be operated and maintained as specified in the contract. NRCS may periodically inspect the conservation practice during the life span of the practice as specified in the contract to ensure that operation and maintenance is occurring.

§ 1466.23 Cost-share and incentive payments.

(a)(1) The maximum direct Federal share of cost-share payments to a participant shall not be more than 75 percent of the projected cost of a structural or vegetative practice. The direct Federal share of cost-share payments to a participant shall be reduced proportionately below 75 percent, or the cost-share limit as set in paragraph (a)(3) of this section, to the extent that total financial contributions for a structural or vegetative practice from all public and private entity sources exceed 100 percent of the projected cost of the practice.

(2) CCC shall provide incentive payments to participants for a land management practice in an amount and at a rate necessary to encourage a participant to perform the land management practice that would not otherwise be initiated without government assistance.

(3) CCC shall set the cost-share and incentive payment limits, as determined by:

(i) The designated conservationist, in consultation with the local work group and State technical committee, for a priority area; or

(ii) The NRCS State conservationist, in consultation with the State technical committee, for participants subject to environmental requirements or with significant statewide natural resource concerns outside a funded priority area.

(4) Cost-share payments and incentive payments may both be included in a contract.

(5) Cost-share and incentive payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the contract.

(b) Except as provided in paragraph (c) of this section, the total amount of cost-share and incentive payments paid to a person under this part may not exceed:

(1) $10,000 for any fiscal year; and

(2) $50,000 for any multi-year contract.

(c) To determine eligibility for payments, CCC shall use the provisions in 7 CFR part 1400 related to the definition of person and the limitation of payments, except that:

(1) States, political subdivisions, and entities thereof will not be persons eligible for payment.

(2) For purposes of applying the payment limitations provided for in this section, the provisions in part 1400, subpart C for determining whether persons are actively engaged in farming, subpart E for limiting payments to certain cash rent tenants, and subpart F as the provisions apply to determining whether foreign persons are eligible for payment, will not apply.

(3)(i) The NRCS State conservationist may authorize, on a case-by-case basis, payments in excess of $10,000 in any fiscal year, up to the $50,000 limitation in paragraph (b) of this section. However, such increase in payments for a certain year shall be offset by reductions in the payments in subsequent years. A decision to approve payments in excess of the annual limit will consider whether:

(A) The practices in the system need to be applied at once so that the system is fully functioning to resolve the natural resource problem;

(B) The natural resource problem is so severe that resolving the problem immediately is needed;

(C) The producer needs to complete the practices in one year so that the farming operation is not interrupted or disturbed by the practice installation over a 5–10 year period; or

(D) The producer can install the practices at a lower total cost when installed in one year, thereby reducing the program payments.

(ii) With respect to land under EQIP contract which is inherited in the second or subsequent years of the contract, the $10,000 fiscal year limitation shall not apply to the extent that the payments from any contracts on the inherited land cause an heir, who was party to an EQIP contract on other lands prior to the inheritance, to exceed the annual limit.

(iii) With regard to contracts on tribal land, Indian trust land, or BIA allotted land, payments exceeding one limitation may be made to the tribal venture if an official of the BIA or tribal official certifies in writing that no one person directly or indirectly will receive more than the limitation.

(4) Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment.

(5) The status of an individual or entity on the date of application shall be the basis on which the determination of the number of persons involved in the farming operation is made.

(6) A participant shall not be eligible for cost-share or incentive payments for conservation practices on eligible land if the participant receives cost-share payments or other benefits for the same land under the Conservation Reserve Program (16 U.S.C. 3831–3836) or the Wetlands Reserve Program (16 U.S.C. 3837 *et seq.*).

(d) The participant and NRCS must certify that a conservation practice is completed in accordance with the contract before the CCC will approve the payment of any cost-share or incentive payments.

(e) CCC expenditures under a contract entered into during a fiscal year shall not be made until the subsequent fiscal year.

§ 1466.24 Contract modifications and transfers of land.

(a) The participant and CCC may modify a contract if the participant and CCC agree to the contract modification and the conservation plan is revised in accordance with NRCS requirements and is approved by the conservation district.

(b) The parties may agree to transfer a contract with the agreement of all parties to the contract. The transferee must be determined by CCC to be eligible and shall assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract.

(c) CCC may require a participant to refund all or a portion of any assistance earned under EQIP if the participant sells or loses control of the land under an EQIP contract and the new owner or controller is not eligible to participate in the program or refuses to assume responsibility under the contract.

§ 1466.25 Contract violations and termination.

(a)(1) If CCC determines that a participant is in violation of the terms of a contract or documents incorporated by reference into the contract, CCC shall give the participant a reasonable time, as determined by the FSA county committee, in consultation with NRCS, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, the FSA county committee may, in consultation with NRCS, terminate the EQIP contract.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, a

contract termination shall be effective immediately upon a determination by the FSA county committee, in consultation with NRCS, that the participant has submitted false information or filed a false claim, or engaged in any act for which a finding of ineligibility for payments is permitted under the provisions of § 1466.35, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b)(1) If CCC terminates a contract, the participant shall forfeit all rights for future payments under the contract and shall refund all or part of the payments received, plus interest determined in accordance with part 1403 of this chapter. The FSA county committee, in consultation with NRCS, has the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, are not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(2) If CCC terminates a contract due to breach of contract or the participant voluntarily terminates the contract before any contractual payments have been made, the participant shall forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract. The FSA county committee, in consultation with NRCS, will have the option to waive the liquidated damages depending upon the circumstances of the case.

(3) When making all contract termination decisions, CCC may reduce the amount of money owed by the participant by a proportion which reflects the good faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract.

(4) The participant may voluntarily terminate a contract if CCC agrees based on CCC's determination that termination is in the public interest.

(5) In carrying out its role in this section, NRCS may consult with the local conservation district.

Subpart C—General Administration

§ 1466.30 Appeals.

(a) A participant may obtain administrative review of an adverse decision under EQIP in accordance with parts 11 and 614 of this title, except as provided in paragraph (b) of this section.

(b) The following decisions are not appealable:

(1) Payment rates, payment limits, and cost-share percentages;

(2) The designation of State-approved priority areas, national conservation priority areas, or significant statewide natural resource concerns;

(3) NRCS funding allocations to States or priority areas;

(4) Eligible conservation practices; and

(5) Other matters of general applicability.

§ 1466.31 Compliance with regulatory measures.

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 1466.32 Access to operating unit.

Any authorized CCC representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance and inspect any work undertaken under the contract. The CCC representative shall make a reasonable effort to contact the participant prior to the exercise of this provision.

§ 1466.33 Performance based upon advice or action of representatives of CCC.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the FSA county committee, in consultation with NRCS, may accept the advice or action as meeting the requirements of the program and may grant relief, to the extent it is deemed desirable by CCC, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant.

§ 1466.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1466.35 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination, shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter, received by such producer with respect to all contracts. The producer's interest in all contracts shall be terminated.

Paul W. Johnson,

Vice President, Commodity Credit Corporation.

[FR Doc. 97–13534 Filed 5–20–97; 11:39 am]

BILLING CODE 3410–16–P

federal register

Thursday
May 22, 1997

Part XI

The President

Presidential Determination No. 97–22—Bosnian Compliance on Withdrawal of Foreign Forces and Terminating Intelligence Cooperation With Iran

Presidential Determination No. 97–23—Assistance Program for the New Independent States of the Former Soviet Union

Federal Register
Vol. 62, No. 99
Thursday, May 22, 1997

Presidential Documents

Title 3—

The President

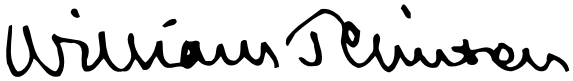
Presidential Determination No. 97–22 of May 5, 1997

Bosnian Compliance on Withdrawal of Foreign Forces and Terminating Intelligence Cooperation With Iran

Memorandum for the Secretary of State

Pursuant to Public Law 104–208, I hereby determine and certify that the Federation of Bosnia and Herzegovina has complied with Article III of Annex 1–A of the General Framework Agreement for Peace in Bosnia and Herzegovina concerning the withdrawal of foreign forces; and that intelligence cooperation on training, investigations, and related activities between Iranian officials and Bosnian officials has been terminated.

You are authorized and directed to transmit this determination and certification to Congress and to arrange for its publication in the **Federal Register.**



THE WHITE HOUSE,
Washington, May 5, 1997.

[FR Doc. 97–13700
Filed 5–21–97; 8:45 am]
Billing code 4710–10–M

Presidential Documents

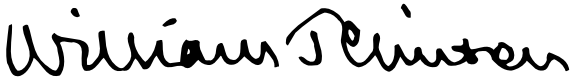
Presidential Determination No. 97–23 of May 5, 1997

Assistance Program for the New Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to subsection (o) under the heading ''Assistance for the New Independent States of the Former Soviet Union'' in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, for Fiscal Year 1996 (Public Law 104–107) and Fiscal Year 1997 (Public Law 104–208), I hereby determine that it is important to the national security interest of the United States to make available funds appropriated under the heading without regard to the restriction in that subsection.

You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 5, 1997.

[FR Doc. 97–13701
Filed 5–21–97; 8:45 am]
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federal register

Thursday
May 22, 1997

Part XII

The President

Executive Order 13047—Prohibiting New Investment in Burma

Federal Register
Vol. 62, No. 99
Thursday, May 22, 1997

Presidential Documents

Title 3—

The President

Executive Order 13047 of May 20, 1997

Prohibiting New Investment in Burma

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208) (the ''Act''), the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the United States Code;

I, WILLIAM J. CLINTON, President of the United States of America, hereby determine and certify that, for purposes of section 570(b) of the Act, the Government of Burma has committed large-scale repression of the democratic opposition in Burma after September 30, 1996, and further determine that the actions and policies of the Government of Burma constitute an unusual and extraordinary threat to the national security and foreign policy of the United States and declare a national emergency to deal with that threat.

Section 1. Except to the extent provided in regulations, orders, directives, or licenses that may be issued in conformity with section 570 of the Act and pursuant to this order, I hereby prohibit new investment in Burma by United States persons.

Sec. 2. The following are also prohibited, except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)) or in regulations, orders, directives, or licenses that may be issued pursuant to this order:

(a) any approval or other facilitation by a United States person, wherever located, of a transaction by a foreign person where the transaction would constitute new investment in Burma prohibited by this order if engaged in by a United States person or within the United States; and

(b) any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 3. Nothing in this order shall be construed to prohibit the entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology, except:

(a) where the entry into such contract on or after the effective date of this order is for the general supervision and guarantee of another person's performance of a contract for the economic development of resources located in Burma; or

(b) where such contract provides for payment, in whole or in part, in:

(i) shares of ownership, including an equity interest, in the economic development of resources located in Burma; or

(ii) participation in royalties, earnings, or profits in the economic development of resources located in Burma.

Sec. 4. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, juridical person organized under the laws of the

United States (including foreign branches), or any person in the United States;

(d) the term ''new investment'' means any of the following activities, if such an activity is undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with the Government of Burma or a nongovernmental entity in Burma on or after the effective date of this order:

(i) the entry into a contract that includes the economic development of resources located in Burma;

(ii) the entry into a contract providing for the general supervision and guarantee of another person's performance of a contract that includes the economic development of resources located in Burma;

(iii) the purchase of a share of ownership, including an equity interest, in the economic development of resources located in Burma; or

(iv) the entry into a contract providing for the participation in royalties, earnings, or profits in the economic development of resources located in Burma, without regard to the form of the participation;

(e) the term ''resources located in Burma'' means any resources, including natural, agricultural, commercial, financial, industrial, and human resources, located within the territory of Burma, including the territorial sea, or located within the exclusive economic zone or continental shelf of Burma;

(f) the term ''economic development of resources located in Burma'' shall not be construed to include not-for-profit educational, health, or other humanitarian programs or activities.

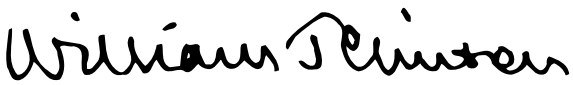
Sec. 5. I hereby delegate to the Secretary of State the functions vested in me under section 570(c) and (d) of the Act, to be exercised in consultation with the heads of other agencies of the United States Government as appropriate.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by section 570(b) of the Act and by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate the authority set forth in this order to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 7. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 8. (a) This order shall take effect at 12:01 a.m., eastern daylight time, May 21, 1997.

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



THE WHITE HOUSE,
May 20, 1997.

[FR Doc. 97–13704
Filed 5–21–97; 8:45 am]
Billing code 3195–01–P

federal register

Thursday
May 22, 1997

Part XIII

Department of State

Bureau of Political-Military Affairs; Imposition of Chemical and Biological Weapons Proliferation Sanctions on Foreign Entities and Persons and Arms Export Control Act Determination; Notices

DEPARTMENT OF STATE

[Public Notice 2551]

Bureau of Political-Military Affairs; Imposition of Chemical and Biological Weapons Proliferation Sanctions on Foreign Entities and Persons

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that eight entities and persons have engaged in chemical weapons proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979 (the authorities of which were most recently continued by Executive Order 12924 of August 19, 1994.

EFFECTIVE DATE: May 21, 1997.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological, and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State (202–647–1142).

SUPPLEMENTARY INFORMATION: Pursuant to section 81(a) of the Arms Export Control Act (22 U.S.C. 2798(a)), section 11C(a) of the Export Administration Act of 1979 (59 U.S.C. app. 2410c(a)), Executive Order 12851 of June 11, 1993, and State Department Delegation Authority No. 145 of February 4, 1980, as amended, the United States Government determined that the following foreign persons have engaged in chemical weapons proliferation activities that require the imposition of the sanctions described in section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(c)):

1. Liao Minglong (Chinese citizen)
2. Tian Yi (Chinese citizen)
3. Chen Qingchang (a.k.a. Q.C. Chen) (Chinese citizen)
4. Pan Yongming (Chinese citizen)
5. Shao Xingsheng (Chinese citizen)
6. Nanjing Chemical Industries Group (NCI) (Chinese company)
7. Jiangsu Yongli Chemical Engineering and Technology Import/Export Corp. (Chinese company)
8. Cheong Yee Limited (Hong Kong company)

Accordingly, the following sanctions are being imposed:

(A) *Procurement Sanction.* The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned persons; and

(B) *Import Sanction.* The importation into the United States of products produced by the sanctioned persons shall be prohibited.

Sanctions on each entity described above may apply to firms or other entities with which that individual is associated. Questions as to whether a particular transaction is affected by the sanctions should be referred to the contact listed above. The sanctions shall commence on May 21, 1997. They will remain in place for at least one year and until further notice.

These measures shall be implemented by the responsible agencies as provided in the Executive Order 12851 of June 11, 1993.

Dated: May 21, 1997.

Thomas E. McNamara,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 97–13776 Filed 5–21–97; 12:05 pm]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2552]

Bureau of Political-Military Affairs, Determination Under the Arms Export Control Act

Pursuant to section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Under Secretary of State for Arms Control and International Security Affairs has made a determination pursuant to section 81 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: May 21, 1997.

Thomas E. McNamara,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 97–13775 Filed 5–21–97; 12:05 pm]

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Federal Register

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FEDERAL REGISTER PAGES AND DATES, MAY

23613–23938 1
23939–24324 2
24325–24558 5
24559–24796 6
24797–25106 7
25107–25420 8
25421–25798 9
25799–26204 12
26205–26380 13
26381–26734 14
26735–26914 15
26915–27166 16
27167–27492 19
27493–27686 20
27687–27926 21
27927–28304 22

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6996 24555
6997 24557
6998 25105
6999 25421
7000 26201
7001 26203
7002 26379
7003 27167
7004 27927

Executive Orders:
12975(Amended by EO 13046) 27685
13046 .....27685, 28108
13047 28301

Administrative Orders:
Presidential Determinations:
No. 97–21 of April 24, 1997 23939
No. 97–22 of May 5, 1997 28295
No. 97–23 of May 5, 1997 28297
Memorandums:
March 27, 1997 26369
April 24, 1997 24797

5 CFR

530 25423
531 25423
591 25423
1312 25426
2641 26915
3801 23941

Proposed Rules:
1603 25558
1640 25559

7 CFR

28 25799
29 24559
35 27493
226 23613
301 .....23620, 23943, 24746, 24753, 28108
340 .....23628, 23945
401 25107
454 23628
457 .....23628, 25107, 26205
718 25433
723 24799
729 25433
947 27169
1131 26735
1230 26205
1464 24799
1466 28258
1493 24560
1494 24560
1710 27929
1755 .....23958, 25017
1930 25062
1941 26918
1944 .....25062, 25071, 26207
1951 25062
1965 25062
3403 26168

Proposed Rules:
Ch. XIII 24849, 25140
319 .....24849, 25561
321 24849
330 24849
401 23675
405 25140
416 .....23680, 26750
425 23685
435 26248
437 23690
457 .....23675, 23680, 23685, 23690, 25140, 26248, 26750
800 26252
1005 27525
1007 27525
1011 27525
1046 27525
1126 26255
1137 24610
1138 26257
1710 27546

8 CFR

292 23634

9 CFR

51 27930
56 27930
71 27930
75 27930
76 27930
77 24801
78 27930
80 27930
85 27930
92 .....23635, 27937
94 .....24802, 25439, 27937
160 25444
161 25444
304 23639
308 .....23639, 26211
310 .....23639, 26211
318 27940
327 23639
381 .....23639, 26211
416 .....23639, 26211
417 23639

Proposed Rules:
3 24611

10 CFR

2 .....26219, 27494
51 26730
52 .....25800, 27293, 27840
110 27494
420 26724

430 26140
450 26724
703 24804
1023 24804
Proposed Rules:
51 26733
71 25146
435 24164

11 CFR

Proposed Rules:
100 24367
104 24367
109 24367
110 24367

12 CFR

217 26736
229 26220
327 27171
543 27177
552 27177
571 27177
614 25831
617 24562
618 25831
620 24808
630 24808
931 26921
934 26921
Proposed Rules:
210 27547
307 26431
330 26435
343 26994
566 26449
Ch. IX 25563

13 CFR

121 ..... 24325, 26381
Proposed Rules:
120 25874

14 CFR

25 27687
39 ..... 23640, 23642, 24009, 24013, 24014, 24015, 24017, 24019, 24021, 24022, 24325, 24567, 24568, 24570, 24809, 24810, 25832, 25833, 25834, 25836, 25837, 25839, 26221, 26223, 26381, 26737, 27293, 27496, 27941, 27943
71 ..... 23643, 23644, 23646, 23647, 34648, 23649, 23651, 23652, 23653, 23654, 23655, 23656, 24024, 25110, 25112, 25445, 25448, 26224, 26383, 26739, 27181, 27659, 27688, 27690
91 268901
95 25448
97 ..... 24025, 25110
121 27920
125 27920
135 27920
187 ..... 24286, 24552
310 25840
374 25840
Proposed Rules:
Ch. I 26894
11 24288
21 24288
25 ..... 24288, 26453
39 ..... 23695, 23697, 24851, 25130, 25563, 25565, 25566, 26258, 26261, 26456, 27211, 27554, 27986, 27987
71 ..... 23699, 25568, 26263, 26264, 26265, 26457, 27212, 27705, 27706
93 26902

15 CFR

730 25451
732 25451
734 25451
736 25451
738 25451
740 25451
742 25451
744 ..... 25451, 26922
750 25451
752 25451
754 25451
756 25451
758 25451
762 25451
764 25451
768 25451
770 25451
772 25451
902 27182
950 24812
Proposed Rules:
3 27556

16 CFR

305 26383
Proposed Rules:
1015 24614

17 CFR

1 ..... 24026, 25470, 26384, 27659
5 26384
15 ..... 24026, 27659
16 ..... 24026, 27659
17 ..... 24026, 27659
31 26384
230 ..... 24572, 26386
239 26386
240 26386
249 26386
270 26923
275 28112
279 28112
Proposed Rules:
230 24160
239 24160
270 ..... 24160, 24161
274 24160

18 CFR

284 25842
Proposed Rules:
4 25874
154 24853
375 25874
430 25569

19 CFR

122 24814
351 27296
353 27296
355 27296
Proposed Rules:
111 24374
163 24374
351 25874

20 CFR

429 24328
Proposed Rules:
222 27989
229 27989
404 26997
416 26997
718 ..... 27000, 27562
722 ..... 27000, 27562
725 ..... 27000, 27562
726 ..... 27000, 27562
727 ..... 27000, 27562

21 CFR

101 28230
172 26225
510 27691
520 27691
522 27692
530 27944
558 27693
806 27183
812 26228
1310 27693
Proposed Rules:
Ch. I 24619
101 28234
178 25475
511 ..... 25212, 25153
514 25152
558 25477
898 25477
1308 ..... 24620, 27214

22 CFR

41 ..... 24331, 24332, 24334
42 27693
122 27497
606 27947

23 CFR

1327 27193

24 CFR

5 ..... 24334, 27124
573 24573
941 27124
950 ..... 24334, 27124
968 27124
3280 24337
3282 24337
Proposed Rules:
200 27486
960 25728
966 25728
3500 25740

25 CFR

Proposed Rules:
181 27000

26 CFR

1 ..... 23657, 25498, 25502, 26740
26 27498
301 ..... 25498, 26740
601 26740
602 25502
Proposed Rules:
1 ..... 26755, 27563
301 26755
601 26755

27 CFR

Proposed Rules:
9 24622

28 CFR

0 23657
45 23941
527 27872
544 25098
Proposed Rules:
16 26458

29 CFR

9 28175
1601 26933
4044 26741
Proposed Rules:
4231 23700

30 CFR

250 27948
251 27948
256 27948
281 27948
282 27948
Proposed Rules:
251 23705
253 24375
914 25875

31 CFR

1 26934
351 24280
356 ..... 25113, 25224
Proposed Rules:
103 ..... 27890, 27900, 27909
207 25572
356 24375

32 CFR

199 26939
310 26389
316 26389
317 26389
706 ..... 23658, 26742, 26743
Proposed Rules:
285 25875

33 CFR

100 ..... 26229, 26744, 27498, 27499, 27960
117 ..... 24338, 25514, 27961, 27962
154 25115
155 25115
156 25115
165 ..... 23659, 24339, 26390, 26392, 27500
325 26229
334 24034
Proposed Rules:
96 23705
100 24377
110 24378
117 27990
167 25576

34 CFR

200 28248
299 28248
668 27128
685 25515
Proposed Rules:
97 28156
1100 24860

36 CFR

Proposed Rules:
7 24624

37 CFR

Proposed Rules:
1....24865
2....24865

38 CFR

21....27963

Proposed Rules:
3....23724
17....23731
36....24872, 24874

39 CFR

20....25136, 25515
111....24340, 25752, 26086

Proposed Rules:
111....25876
502....25876
3001....25578

40 CFR

52....24035, 24036, 24341, 24574, 24815, 24824, 24826, 26393, 26395, 26396, 26399, 26401, 26405, 26745, 26854, 27195, 27198, 27199, 27201, 27204, 27964, 27968
60....24824
70....26405
81....24036, 24038, 24552, 24826, 26230, 27204
87....25356
148....26998
180....24040, 24045, 24835, 24839, 25518, 25524, 26407, 26412, 26941, 26946, 26949, 26954, 26960
244....24051
261....26998
268....26998
271....26998, 27501
372....23834
721....27694

Proposed Rules:
Ch. I....27991
51....27158
52....24060, 24380, 24632, 24886, 24887, 26459, 26460, 26463, 27158
60....24212, 24887, 25877
63....24212, 25370, 25877, 27707
68....17992
80....24776, 25879
81....24065, 26266
82....27874
87....25368
131....27707
148....26041
180....24065, 27002, 27132, 27142, 27149
194....27996
228....26267
260....24212, 25877
261....24212, 25877, 26041
264....24212, 25877
265....24212, 25877
266....24212
268....26041
270....24212, 25877
271....24212, 25877, 26041
300....26463, 27998
372....24887

41 CFR

101–21....27972
302–1....26374
302–6....26374

Proposed Rules:
101–47....24383

42 CFR

405....25844
413....27210
417....25844
473....25844
493....25855

43 CFR

3800....26966

Proposed Rules:
3400....27563
3410....27563
3420....27563
3440....27563
3450....27563
3460....27563
3470....27563
3480....27563

44 CFR

64....24343, 27503
67....25858

Proposed Rules:
62....23736
67....25880

45 CFR

1610....27695
1626....24054, 24159
1642....25862

46 CFR

13....25115
15....25115
30....25115
35....25115
98....25115
105....25115
108....23894, 27659
110....23894
111....23894
112....23894
113....23894
159....25525
160....25525
161....23894
169....25525
199....25525

Proposed Rules:
2....23705
31....23705
71....23705
91....23705
107....23705
115....23705
126....23705
175....23705
176....23705
189....23705

47 CFR

0....24054
1....24576, 26235
2....24576, 26239, 26684
15....26239
24....27563
64....24583, 24585
68....24587
73....24055, 24842, 24843, 24844, 25557, 26416, 26417, 26418, 26419, 26684, 26966, 27700, 27701, 27702
74....26684
76....25865, 26235, 26245
101....24576

Proposed Rules:
Ch. I....25157
1....26465, 27710
2....24383
24....27507
25....24073
73....24896, 26466, 27710, 27711

48 CFR

1201....26419
1202....26419
1203....26419
1211....26419
1214....26419
1237....26419
1246....26419
1252....26419
1253....26419
1831....24345
6103....25865
6104....25868, 25870
6105....25870

Proposed Rules:
1....26640, 27214
2....26640, 27214
3....26640, 27214
4....26640, 27214
5....26640, 27214
6....26640, 27214
7....26640, 27214
8....27214
9....26640, 27214
11....26640, 27214
12....25786, 26640, 27214
13....26640, 27214
14....25786, 26640, 27214
15....25786, 26640, 27214
16....26640, 27214
17....26640, 27214
19....25786, 26640, 27214
24....26640, 27214
25....26640, 27214
27....26640, 27214
28....26640, 27214
31....26640, 27214
32....23740, 26640, 27214
33....25786, 26640, 27214
34....27214
35....26640, 27214
36....26640, 27214
42....26640, 27214
43....26640, 27214
44....26640, 27214
45....26640, 27214
49....26640, 27214
50....26640, 27214
52....23740, 25786, 26640, 27214
53....25786, 26640, 27214
252....23741
1515....27712

49 CFR

1....23661
8....23661
10....23666
107....24055
171....24690
172....24690
173....24690
175....24690
176....24690
178....24690
190....24055
571....25425
572....27563
801....27702
837....27702

Proposed Rules:
192....27715
195....27715
Ch. V....27578
571....26466
Ch. X....24896
1039....27002, 27003
1121....23742
1150....23742

50 CFR

17....27973
91....24844
222....24345
227....24345, 24588
285....27518
600....23667
622....23671
630....26427
648....25138, 27978
660....24355, 24845, 25872, 27519, 27523, 28108
670....24058
674....26428
678....26428, 27703
679....24058, 25138, 26246, 26428, 26429, 26749, 26854, 26992, 27210

Proposed Rules:
17....24387, 24388, 24632, 26757
600....23744, 24897, 27214
622....25158
648....24073

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 22, 1997

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:
- Environmental Quality Incentives Program; published 5-22-97

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:
- Electric borrowers whose net worth exceeds 110 percent of outstanding loans; exemptions of operational controls; timing of notification to borrowers; published 5-22-97

ARMS CONTROL AND DISARMAMENT AGENCY

Conflict of interests; published 5-22-97

DEFENSE DEPARTMENT

Vocational rehabilitation and education:
- Reservists' education—
  - Montgomery GI Bill-Selected Reserve; rates payable increase; published 5-22-97

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Materials incorporated by reference; format revision; published 5-22-97

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Antitrust litigation expenses; accounting for judgments and other costs; published 4-25-97

Frequency allocations and radio treaty matters:
- Mobile satellite services; 2 GHz allocation; published 4-22-97

GENERAL SERVICES ADMINISTRATION

Federal property management:
- Public buildings and space—
  - Reimbursable work authorizations; pricing practices; published 5-22-97

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:
- Royalties, rentals, bonuses, and other monies due Federal Government; collection; published 4-22-97

TRANSPORTATION DEPARTMENT

Coast Guard

Vocational rehabilitation and education:
- Reservists' education—
  - Montgomery GI Bill-Selected Reserve; rates payable increase; published 5-22-97

TRANSPORTATION DEPARTMENT

Economic regulations:
- Ticketless travel; passenger notices; published 4-22-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class D airpace Correction; published 5-2-97

Class D airspace; published 2-25-97

Class D and Class E airspace; published 3-11-97

Class E airspace; published 1-14-97

Class E airspace; correction; published 4-15-97

IFR altitudes; published 5-9-97

Restricted areas; published 2-19-97

TREASURY DEPARTMENT

Customs Service

Trademarks, trade names, and copyrights:
- Anticounterfeiting Consumer Protection Act; disposition of excluded articles; published 4-22-97

VETERANS AFFAIRS DEPARTMENT

Vocational rehabilitation and education:
- Reservists' education—
  - Montgomery GI Bill-Selected Reserve; rates payable increase; published 5-22-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Limes grown in Florida and imported; comments due by 5-29-97; published 4-29-97

Milk marketing orders:
- Upper Florida; comments due by 5-27-97; published 4-24-97

Soybean promotion, research, and consumer information:
- United Soybean Board; representation adjustments; comments due by 5-30-97; published 4-30-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:
- Rulemaking petitions—
  - Retail pet store; term definition; comments due by 5-27-97; published 3-25-97

Plant-related quarantine, foreign:
- Fruits and vegetables; importation; comments due by 5-27-97; published 3-25-97

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Fees:
- Official inspection and weighing services; comments due by 5-28-97; published 5-13-97

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:
- Electric borrowers; accounting requirements; comments due by 5-29-97; published 4-29-97

BLIND OR SEVERELY DISABLED, COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE

Committee for Purchase From People Who Are Blind or Severely Disabled

Miscellaneous amendments; comments due by 5-27-97; published 3-27-97

COMMERCE DEPARTMENT

International Trade Administration

Uruguay Round Agreements Act (URAA):
- Antidumping and countervailing duties; conformance and Federal regulatory review; comments due by 5-27-97; published 5-12-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Shortraker and rougheye rockfish; comments due by 5-27-97; published 5-14-97
- Atlantic swordfish; drift gillnet emergency closure; comments due by 5-29-97; published 5-14-97
- West Coast States and Western Pacific fisheries—
  - Chinook salmon; comments due by 5-27-97; published 5-12-97

Marine mammals:
- Incidental taking—
  - Naval activities; USS Seawolf submarine shock testing; comments due by 5-28-97; published 4-28-97

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Modular contracting; comments due by 5-27-97; published 3-27-97
- Progress payments; comments due by 5-30-97; published 5-1-97

DEFENSE DEPARTMENT

Engineers Corps

Water resource development projects, public use; shoreline use permits; comments due by 5-30-97; published 4-15-97

ENERGY DEPARTMENT

Acquisition regulations:
- Technical data regulations; revisions to rights; comments due by 5-30-97; published 3-31-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Wool fiberglass manufacturing facilities; comments due by 5-27-97; published 3-31-97

Air programs:
- Outer Continental Shelf air regulations—
  - Corresponding onshore area requirements; consistency update for Florida; comments due by 5-30-97; published 4-30-97

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 5-30-97; published 4-30-97

New Jersey; comments due by 5-30-97; published 4-30-97
Oklahoma; comments due by 5-29-97; published 5-14-97
Washington; comments due by 5-30-97; published 4-30-97
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Alabama; comments due by 5-30-97; published 4-30-97
Clean Air Act:
Enhanced monitoring program; compliance assurance monitoring; credible evidence revisions
Document availability; comments due by 5-27-97; published 4-25-97
Water pollution control:
Water quality standards—
Idaho; comments due by 5-28-97; published 4-28-97

FARM CREDIT ADMINISTRATION
Farm credit system:
Funding and fiscal affairs, loan policies and operations, and funding operations—
Cumulative voting by shareholders; comments due by 5-27-97; published 4-25-97

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Colorado; comments due by 5-27-97; published 4-11-97
Kansas; comments due by 5-27-97; published 4-11-97
Louisiana; comments due by 5-27-97; published 4-11-97
Missouri; comments due by 5-27-97; published 4-11-97
Nevada et al.; comments due by 5-27-97; published 4-11-97

FEDERAL ELECTION COMMISSION
Contribution and expenditure limitations and prohibitions:
Independent expenditures and party committee expenditure limitations; comments due by 5-30-97; published 5-5-97

FEDERAL RESERVE SYSTEM
Federal Reserve Bank Capital Stock; Issue and Cancellation (Regulation I):
Simplification, update, and regulatory burden reduction; comments due by 5-30-97; published 3-31-97
Membership of State banking institutions (Regulation H):
Simplification, update, and regulatory burden reduction; comments due by 5-30-97; published 3-31-97
Security procedures (Regulation P); comments due by 5-30-97; published 3-31-97

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
Thrift savings plan:
Death benefits payments; comments due by 5-27-97; published 3-27-97

FEDERAL TRADE COMMISSION
Hobby Protection Act:
Overall costs, benefits, and regulatory and economic impact; comments due by 5-27-97; published 3-25-97

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Modular contracting; comments due by 5-27-97; published 3-27-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Polymers—
1,4-benzenedicarboxylic acid, etc.; comments due by 5-28-97; published 4-28-97
Food for human consumption:
White chocolate; identity standard; comments due by 5-27-97; published 3-10-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare and Medicaid programs:
Physical therapy, respiratory therapy, speech language pathology, and occupational therapy services; salary equivalency guidelines; comments due by 5-27-97; published 3-28-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Housing Opportunity Program Extension Act of 1996; implementation:
Section 8 rental certificate, rental voucher, and moderate rehabilitation programs; admission and occupancy requirements; comments due by 5-30-97; published 3-31-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Preble's meadow jumping mouse; comments due by 5-27-97; published 3-25-97

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; geological and geophysical explorations; comments due by 5-30-97; published 5-1-97
Outer Continental Shelf; oil, gas, and sulphur operations:
Oil and gas production measurement, surface commingling, and security; comments due by 5-27-97; published 2-26-97
Royalty management:
Functions; delegation to States; comments due by 5-27-97; published 4-24-97
Oil valuation; Federal leases and Federal royalty oil sale; comments due by 5-28-97; published 4-24-97

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Alabama; comments due by 5-27-97; published 4-25-97
Indiana; comments due by 5-29-97; published 4-29-97
Missouri; comments due by 5-29-97; published 4-29-97

JUSTICE DEPARTMENT
Justice Programs Office
Public safety officers' death and disability benefits:
Federal law enforcement dependents assistance program; comments due by 5-27-97; published 4-24-97

LABOR DEPARTMENT
Pension and Welfare Benefits Administration
Employee Retirement Income Security Act:
Plan assets; participant contributions; comments due by 5-27-97; published 3-27-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Modular contracting; comments due by 5-27-97; published 3-27-97

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Public availability and use:
Reproduction services; fee schedule; comments due by 5-30-97; published 3-31-97

POSTAL SERVICE
Domestic Mail Manual:
Special services reform; implementation standards; comments due by 5-27-97; published 5-12-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air traffic operating and flight rules:
Grand Canyon National Park; establishment of corridors; comments due by 5-27-97; published 5-15-97
Airworthiness directives:
Airbus Industrie; comments due by 5-30-97; published 3-31-97
Boeing; comments due by 5-27-97; published 4-17-97
Empresa Brasileira de Aeronautica S.A.; comments due by 5-30-97; published 3-12-97
General Electric Aircraft Engines; comments due by 5-30-97; published 3-31-97
Mooney Aircraft Corp.; comments due by 5-30-97; published 3-26-97
Airworthiness standards:
Special conditions—
Ilyushin Aviation Complex model Il-96T airplane; comments due by 5-27-97; published 4-9-97
Lockheed Martin Aerospace Corp. model L382J airplane;

comments due by 5-27-97; published 4-10-97

Class D airspace; comments due by 5-30-97; published 4-14-97

Class E airspace; comments due by 5-27-97; published 3-26-97

VOR Federal airways; comments due by 5-27-97; published 4-9-97

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Antiterrorism and Effective Death Penalty Act of 1996; implementation:

Plastic explosives; marking for purpose of detection; comments due by 5-27-97; published 2-25-97

VETERANS AFFAIRS DEPARTMENT

DIsabilities rating schedule:

Cold injuries; comments due by 5-27-97; published 3-28-97